

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #3 □

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

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

AGENCY: Division Environmental Protection-Office of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: WV Code §22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

TITLE OF RULE BEING AMENDED: "To Prevent and Control Emissions From Municipal
Solid Waste Landfills"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Carrie J. Chambe

Authorized Signature



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526



West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

August 23, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 45CSR23 - "To Prevent and Control Emissions from Municipal Solid
Waste Landfills"

Dear Ms. Cooper:

This letter will serve as my approval to file with your Office the above-referenced Legislative rule as "Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my Office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: Karen Watson
Carrie Chambers

Questionnaire

DATE: September 1, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection
Office of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304
Phone: (304) 926-3647

LEGISLATIVE RULE TITLE: 45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Landfills"

1. Authorizing statute (s) citation: W. Va. Code §§ 22-5-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 12, 2000

- b. What other notice, including advertising, did you give of the hearing?
 - I. Class I legal advertisement, *Charleston Daily Mail & Charleston Gazette*
 - II. Sent a copy of the Public Notice to our agency mailing list.
 - III. Public Notice placed on agency's Web site:
<http://www.dep.state.wv.us/oaq/>
 - IV. Press Release

- c. Date of Public Hearing (s) or Public Comment Period ended:
Public Hearing -- August 14, 2000
Public Comment Period ended -- August 14, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (Be exact)

August 29, 2000

f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

<u>Edward L. Kropp, Chief</u>	<u>Carrie Chambers, Executive Assistant</u>
<u>7012 MacCorkle Ave., SE</u>	<u>10 McJunkin Road</u>
<u>Charleston, WV 25304</u>	<u>Nitro, WV 25143-2506</u>
<u>Phone: (304) 926-3647</u>	<u>(304) 759-0515</u>
<u>Fax: (304) 926-3637</u>	<u>(304) 759-0526</u>
<u>E-Mail: skropp@mail.dep.state.wv.us</u>	<u>Cchamb@mail.dep.state.wv.us</u>

g. **IF DIFFERENT from item 'f'**, please give Name, title, address and phone number (s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

See "f" above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Landfills"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq.

B. SUMMARY OF RULE:

This rule establishes standards of performance and emission guidelines for municipal solid waste landfills pursuant to section 111 of the federal Clean Air Act, as amended (CAA). It is the intent of the Director to adopt these standards by reference. These standards require facilities with municipal solid waste landfill emissions exceeding 50 megagrams per year (approximately 55.12 tons) to install an air pollution control system within 2.5 years. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to such standards. The proposed rule revisions include technical corrections and clarifications contained in recent federal regulations.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Under the CAA, the U.S. Environmental Protection Agency (U.S. EPA) issued a final rule entitled "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills", published in the Federal Register on March 12, 1996 (61 FR 9905). A subsequent direct final rule was published on June 16, 1998 (63 FR 32743) and on February 24, 1999 (64 FR 9257). All of these federal regulations were incorporated by 45CSR23, authorized by the 2000 Legislature and made effective May 1, 2000. The purpose of this rule amendment is to update 45CSR23 to be consistent with the federal counterpart rule promulgated on April 10, 2000 (65 FR 18906), which made certain technical corrections to the federal rule promulgated on June 16, 1998.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

A federal counterpart to this proposed rule exists. In accordance with the Director's recommendation, and with limited exception, the Office of Air Quality proposes that the rule incorporate by reference the federal counterparts.

Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its July 6, 2000 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. Their comments are contained in the attached minutes.

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 6, 2000, Director's Conference Room, Nitro

The twenty-first meeting of the DEP Advisory Council was held Thursday, July 6, 2000, in the Director's Second Floor Conference Room located in Nitro. Chairman Mike Castle called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Castle, Chairman
Lisa Dooley
Jacqueline Hallinan
Bill Raney
Rick Roberts
Bill Samples

Environmental Protection:

Greg Adolfson	Ava King
John Ailes	Brian Long
John Benedict	Pam Nixon
Al Blankenship	Rocky Parsons
Carrie Chambers	Jennifer Pauer
Dick Cooke	Cap Smith
Mike Dorsey	Randy Sovic
Andy Gallagher	Charlie Sturey
Randy Huffman	Darcy White
John Johnston	

1) Review and Approval of April 6, 2000 Minutes.

The April 6 Minutes were approved with note of two minor revisions.

2) Discussion of Proposed Rule Amendments - 2001 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's rule-making procedure policy that was implemented in 1998, and included involving DEP's Advisory Council in DEP's rule-making process as early as possible to enable the Council to

review, comment, and make recommendations to the Director on the proposed Legislative rules before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

John Benedict, Deputy Chief of the Office of Air Quality (OAQ), reviewed the following OAQ rules:

- 45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"
- 45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"
- 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"
- 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR part 60"
- 45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Authorities"
- 45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR30 - "Requirements for Operating Permits"
- 45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"

In discussion of 45CSR1, John explained to the Council that they did not have the companion rule (which is 45CSR26) to this proposed rule amendment, but Council will be provided a copy of the proposed rule when the draft is complete. Both rules have been drafted as a response to EPA's NO_x SIP Call. Failure of states to respond to the SIP Call will result in a NO_x federal implementation plan or federal program to reduce NO_x emissions under Section 126 of the CAA. John explained that OAQ is late in drafting both rules because they were waiting until several issues were settled in federal court. EPA is now requiring, and the federal courts concurred, that states develop rules and meet the conditions of the SIP Call by October 28, 2000. EPA's SIP Call affects major utility sources, cement kilns, and large

industrial-type boilers (those exceeding 250 lbs/mmBtu). The SIP Call originally included internal combustion engines.

45CSR1 establishes standards specifically for non-utility boilers, and follows EPA's model rule that states are to use in developing their SIPS. The model rule incorporates standards to allow sources to trade emissions between states. Therefore, states do not have a lot of flexibility to adjust their state-specific rules, if they want their sources to participate in a national NO_x budget-trading program.

John informed the Council that **45CSR15** adopts by reference the new federal provisions for emission standards for hazardous air pollutants (NESHAPS), and other regulatory requirements as outlined in 40 CFR Part 61, as of June 1, 2000. This also applies to **45CSR16**, which specifically includes associated reference methods, performance specifications, other test methods, and a minor correction to the reporting requirements for industrial-commercial-institutional steam generating units.

45CSR6 prevents and controls particulate matter air pollution from the combustion of refuse by the prohibition of open burning. This proposed rule also establishes weight and visible emission standards for incinerators and incineration, and is part of the West Virginia State Implementation Plan (SIP) approved by EPA. The rule does not prohibit bonfires, campfires, or other forms of open burning for the purposes of personal enjoyment and comfort, but establishes standards for open burning. The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under **45CSR13**.

45CSR23 - This rule was first promulgated approximately three years ago, and for the most part adopts new federal standards by reference. There is a specific plan that each state puts together for "existing sources" that OAQ has done for previous rule versions, and the plan for West Virginia has been approved by EPA.

45CSR25 - This rule establishes a program of air quality regulation over the treatment, storage, and disposal of hazardous wastes. John informed Council that this proposed rule amendment is incorporating additional federal requirements promulgated by EPA, as of June 1, 2000. There is a shift from the Resource Conservation and Recovery Act (RCRA) requirements into the Clean Air Act (CAA) programs that OAQ operates. Many of the RCRA provisions previously contained in this rule are now being

shifted to 45CSR34 (which will be discussed later in the meeting). John said this proposed rule amendment is also necessary to maintain consistency with the Office of Waste Management's current rule - 33CSR20.

45CSR26 (copy not provided for Council at this time) specifically addresses NO_x reduction requirements for electric generating units. This rule deviates somewhat from EPA's model rule, but follows the Governor's Coalition proposal. EPA's model rule requires electric generating units .15 lb/mmBtu NO_x limits, which is roughly an 85% reduction in NO_x emissions. Whereas, the Governor's coalition proposal requires .25 lb/mmBtu NO_x limits, or 65% reduction from their 1999 emissions.

45CSR30 establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act and 40 CFR Part 70. These proposed amendments will incorporate various corrections and revisions associated with the November 1995 Federal Register Notice. John said OAQ has deferred making these changes until now in anticipation of additional changes they believe EPA will make in Part 70. There also has not been a great deal of concern since OAQ has received interim approval of the program since 1994; however, EPA was recently sued for issuing these interim approvals. This put OAQ in the position of amending the rule to comply with the November 1995 requirements, so that OAQ can receive final approval from EPA. John said the rule may need to be modified again in the near future when (and if) EPA modifies the Part 70 requirements.

45CSR34 - This rule provides authority for the Director to determine and enforce case-by-case maximum achievable control technology (MACT) standards for major hazardous air pollutant sources, in the absence of a federal standard under certain circumstances, as required for permit program approval under Title V of the CAA. John said this proposed amendment does delete the requirement that OAQ do a case-by-case MACT analysis for sources that modify. He said this is a fairly significant change in the rule. Previously, and even under OAQ's Title V program, sources that do even slight modifications and were to eventually receive a MACT standard from EPA, were required to make some kind of guess as to what that standard was under such modification, and then do a case-by-case analysis to make that source comply with what everybody thought would be the ultimate MACT standard for that source. EPA was sued over this particular requirement, and has since removed the requirement from the Title V program. As mentioned earlier in the meeting, OAQ is also

proposing incorporating the provisions in 45CSR25, pertaining to hazardous waste combustors, into this rule.

After discussions and questions concerning OAQ's proposed rules, Council recommended the following to Chairman Castle:

Bill Raney deferred to Ray Joseph, representing the natural gas industry, for questions concerning Section 6 of 45CSR6 (To Prevent and Control Air Pollution From Combustion on Refuse) requirements for Permits before the installation and use of emergency flares. The concern from Mr. Joseph was that in certain situations emergency flares would exceed permitting trigger levels requiring a permit pursuant to 45CSR13. John Benedict concurred that permits would be required under those circumstances. However, that should not be that much of a burden since the emissions from a majority (90% +) of emergency flares used in the natural gas industry would be below permit trigger levels. It was noted that Section 6 was specifically revised to allow the use of emergency flares for the natural gas industry, and that others in OAQ were more directly involved in drafting the specific language in Section 6. Mr. Benedict recommended that proposed rule 45CSR6 go to public notice as drafted, and that the OAQ would meet with representatives of the natural gas industry to further discuss their concerns, and possibly consider revisions in Section 6.

Bill Raney asked if the Administrative Procedures Act requires Fiscal Notes to be completed as to the implications of the rule on the regulated community. Carrie Chambers advised Mr. Raney that fiscal notes are prepared for each rule before they are filed for public hearing, but the fiscal note requires information on the cost to the state in implementing the proposed rules, not on the regulated community. The Fiscal Notes are a work-in-progress, and will be submitted to Council after they are completed. Mr. Raney expressed his concern by stating that he has a problem in approving the proposed rules without the Council reviewing these documents beforehand. He said agencies have typically been known to crank out the standard responses to the fiscal notes, which leads to problems during the Legislative Rule-Making process. Bill Samples said he wasn't sure if the Council has a right to approve or disapprove the proposed rules, but only that the Director is to consult with Council on the proposed amendments, and then consider their comments. Mr. Raney stated that he would still like his concerns noted and included in the minutes that will be filed with the proposed rules.

Mr. Raney said he would also like to ask why there is nothing on the agenda concerning the Environmental Quality Board's (EQB) Water Quality Standards rule. Carrie Chambers explained that she has included a copy of EQB's rule (and also three of the Solid Waste Management Board's proposed rules), for Council's review, in the notebooks containing DEP's rules. She went on to explain that since the Boards have their own rule-making authority under §22B-3-4, they are not required to go before the Advisory Council during the rule-making process.

Mr. Raney said that DEP has a huge obligation in regards to water quality standards, regardless of who has the rule-making authority. He also said that the rules as proposed are huge, and the implications to the regulated community are immense.

Chairman Castle said he would try to find someone from OWR or EQB to discuss EQB's rule later in the meeting.

- 60CSR4 - "Awarding of West Virginia Stream Partners' Program Grant Rule."

Jennifer Pauer, Program Coordinator for the Stream Partners' Program, briefed Council members on the proposed amendments to 60CSR4. Jennifer said this rule was filed as an emergency rule in March. After one year of implementing the rule, it was discovered that the rigid spending caps contained in the original rule made it difficult to implement as intended by §20-13-4. The proposed amendments will loosen these spending caps, and therefore make it easier for grant recipients to complete their watershed improvement projects. The rule also contains minor technical cleanup.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 60CSR4.

- 199CSR1 - "Surface Mining Blasting Rule"

Darcy White, Office of Explosives and Blasting (OEB), briefed Council on 199CSR1. Darcy explained that many of the proposed amendments to the Surface Mining Blasting rule are technical cleanup in nature and also involve changing the order of some provisions to improve clarity. Sections covering inspections and enforcement and appeals were extracted from portions of existing 38CSR2, the Surface Mining and Reclamation rule. These sections are being amended into the current rule to

ensure OEB has authority to enforce a program that will satisfy OSM requirements. Another section extracted from 38CSR2 deals with pre-blast survey requirements, and is necessary if OEB is to gain OSM approval of the proposed rules. Darcy said that subsection 3.11 also contains a proposed revision that allows the Director to further restrict blasting on a case-by-case basis as an alternative to prohibiting blasting altogether. To correspond with the blaster's certification rules approved by OSM, and to help improve certified blaster's professionalism and knowledge, the requirements for blaster's certification is also being proposed as an amendment to this rule.

Larry Harris, Advisory Council member, was unable to attend the meeting; however, he expressed the following comments on 199CSR1 by e-mail. He asked whether these blasting rules will also apply to the quarry bill and rules. He said that in the Surface Mining Blasting rule there seems to be some consideration of the premining groundwater/wells. This presumes that any taking of this water right from nearby landowners is cause for a claim. Is this also true for limestone quarries?

Darcy responded by saying that no, 199CSR1 applies only to coal mining. Blasting requirements for quarries are addressed in S22-4 (revised during the past legislative session, and effective this July). Rocky Parsons is currently working on a rules package as required by this legislation. Until those are promulgated, there is no change in blasting requirements for quarries.

After discussion and questions from the Council, there were no recommendations made to the Director concerning the proposed amendments to 199CSR1.

John Johnston, Chief of the Office of Oil and Gas, discussed the following proposed rules.

- 35CSR4 - "Oil and Gas Wells and Other Wells"
- 35CSR7 - "Certification of Gas Wells"

John told Council that there are three proposed amendments to 35CSR4 and one to 35CSR7 that are both fairly straightforward. He said the proposed amendments in 35CSR4 will: 1) allow the plats to be submitted electronically. This is the first step in relation to authorizing permitting electronically for oil and gas wells; 2) will apply to the procedure for well transfer. These proposed amendments will eliminate the pre-circular, and cut the

paperwork and mailing in half that the Office of Oil and Gas must perform in the transfer process. This will also allow the transfer of well responsibility to occur in a more timely manner; and 3) will waive the new certification for the reuse of plats when applying for plugging permits.

35CSR7 - The Federal Energy Regulatory Commission is proposing to reinstate certain regulations regarding well category determination under the Natural Gas Policy Act of 1978, Section 503. This section allows natural gas producers to obtain tax credits under Section 29 of the Internal Revenue Code. Section 503 first requires a determination by the local regulatory agency that a well is producing one of the types of gas eligible for the Section 29 tax credit. The promulgation of these proposed rules will enable the Office of Oil and Gas to review and conduct the first determination.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 35CSR4 and 35CSR7.

The following Office of Waste Management rules were discussed:

- 33CSR3 - "Yard Waste Management Rule"
- 33CSR5 - "Waste Tire Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"
- 33CSR32 - "Underground Storage Tank Insurance Fund"

Dick Cooke, Assistant Chief, Office Waste Management (OWM), briefed Council on 33CSR3. He said OWM has taken a policy statement, that with a change in the yard waste laws approximately two years ago, provided for the Director to provide for reasonable and necessary exceptions to the prohibition of yard waste in landfills. This provision was not incorporated into the rule as the Legislature intended at that time. This proposed amendment incorporates that exception into the rule, and will allow West Virginia residents to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available.

Dick Cooke explained to Council that SB 427 (the Tire Bill) mandated that emergency rules be promulgated under 33CSR5. The

proposed emergency rule, among other amendments, will allow the disposal of waste tires in solid waste landfills, but only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available. The proposed amendments also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

Mike Dorsey, Assistant Chief, OWM, next discussed 33CSR20. He explained the rule is being amended to adopt by federal reference the 1999 changes made to 40 CFR Parts 260 through 279. Those amendments include Hazardous Waste Management System: Modification of the Hazardous Waste Program, Hazardous Waste Lamps, and 180-day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry. These amendments are less stringent than federal regulations and are intended to assist the regulated community, and encourage recycling and waste minimization.

Mike said OWM has two rule amendments this year that deal with underground storage tanks. The first, 33CSR30, applies to a very small segment of the population. This rule, as well as federal EPA requirements, requires that all underground storage tanks (UST) have corrosion protection by December 22, 1998. Many UST systems were upgraded to meet the standards rather than new USTs being installed; however, the UST inspectors are finding that many of the systems were not installed correctly. Since the current rules do not specifically require certification of persons who install corrosion protection, the burden falls solely on the UST owners and/or operators to correct the system. This proposed amendment should prevent this from continuing in the future.

33CSR32, OWM's final proposed rule, deals with the Underground Storage Tank Insurance Fund. This rule requires that accrued interest on the UST Insurance Trust Fund Capitalization Fund remain in that fund. The UST Administrative Fund has been depleted, and the annual registration fee assessment no longer generates enough revenue to support the UST program. The expenditures from the UST Administrative Fund are used as the required match for the federal grant. Unless more revenue is deposited in the UST Administrative Fund, there will be insufficient funds to pay personnel and other operating costs. The proposed amendments to this rule will allow the transfer of the interest money and alleviate the need to increase the annual registration fees. Mike said this amendment has the full support of the UST Advisory Committee.

After discussion of OWM's proposed rules, the following amendment to 33CSR5 (the Waste Tire Disposal rule) was offered by Counsel:

Bill Samples said that section 3.1.a indicates that a permit is required for persons who generate waste tires, but he couldn't find a definition of "generator," and this could be confusing when trying to interpret the rule. Cap Smith, Chief of OWM, said that is a very good point, and it will certainly be taken into consideration during the public hearing/comment period timeframe.

The following Office of Mining and Reclamation rules were discussed:

- 38CSR2 - "WV Surface Mining Reclamation Rule"
- 38CSR3 - "Rules for Quarrying and Reclamation"

John Ailes, Assistant Chief, OMR, briefly described the proposed amendments to 38CSR2, and noted that most of the amendments deal with Office of Surface Mining program amendments.

After discussion/questions concerning 38CSR2, the following comments were made by Council:

In Section 14.15.f, OMR is proposing to tie contemporaneous reclamation to reclamation liability. The proposed amendment stated that the reclamation liability cannot exceed the bond posted for the site. Bill Raney stated his concern with limiting the area to be disturbed based upon liability. He questioned who would be determining reclamation liability, and how. He said that he understands the reasoning, but would like to go on record as being "cautiously reserved," and additional comments would be forthcoming during the public hearing/comment period.

The proposed amendment to strike Section 23, which deals with coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use, was questioned by Council. John explained to Council that this provision was amended into the rule a few years ago, but never approved by OSM, and therefore deleted from the rule mainly as a cleanup. Bill Raney said that he is hesitant to see the Section deleted from the rule since it is still in DEP's statute, and has been beneficial to businesses several times throughout the state. After further discussion, Chairman Castle agreed to reinstate Section 23 and will work with OSM to seek program approval.

Rocky Parsons, OMR Assistant Chief, discussed the newly-proposed Quarry mining rules, 38CSR3, authorized in HB 4055, effective June 8. He said that the Statue was developed through the stakeholders' process, and the rules have been drafted the same way. DEP intends to file the rules as "Emergency," and at the same time file the rules to go through the normal legislative rule-making process. He said it is still a working document, but any changes made will be as a result of the stakeholders' process.

After discussion/questions on 38CSR3, the following comments are noted by Council members:

Mr. Larry Harris commented by e-mail on 38CSR3. He stated that his concerns for quarries are "related to degradation of nearby streams and water tables. Where limestone is located the quality of streams is generally high, often being trout streams. Quarries can alter the quality of the stream through siltation, and the quantity through alterations of the water table due to blasting. Hence, we want to make sure that the rules adequately address these two issues. I think that the water quality baseline studies should include a bottom fines analysis of receiving streams. Duffield of the Forest Service has established a direct relationship between the % of fines in stream sediment and the biological productivity of the stream. Having a baseline value for the receiving stream, and requiring monitoring to assure that this figure is not increased to the point where productivity is altered, would be a suitable protection for the stream - Part of 3.5 of the proposed rules."

Mr. Harris also noted his objection to calling streams "Natural Drainways" in subsection 2.17 of the definitions - He stated that "this nomenclature lowers the status of streams to drains, which are essentially industrial conduits or pipes. Very often these streams are manipulated in a way that destroys habitat and degrades the productivity of that stream."

Rocky responded that he will take these comments to the next stakeholders' meeting for their consideration, including a possible rewrite of 2.17.

Mr. Harris also asked if there are any preblast assessments or surveys of the groundwater level. Rocky responded by saying that preblast surveys do require a sampling of the water wells. With, quarries, operations in existence now have a year to do a preblast survey to the nearest protected structure within 1,000

feet of the blasting area. A new permit has to do a preblast survey for any structure within 1,500 feet of the blasting area, as opposed to 1/2 mile with coal.

Bill Samples pointed out section 7.4.b., that deals with sediment control, seems to be awkwardly worded. As it is worded, the Director has to make a very definitive determination on something that the applicant only has to have a reasonable likelihood of. Chairman Castle agreed with this comment, and the rule will be amended accordingly.

Mr. Samples also noted in 7.4.c., that normally in an environmental regulation when something has to be removed, you say it has to be disposed of in an appropriate manner. Chairman Castle agreed with this comment and amendment to this section.

3. Open Discussion.

Chairman Castle introduced Libby Chatfield, Technical Advisor for the Environmental Quality Board. Chairman Castle thanked Libby for taking the time to appear before Council to discuss 46CSR1, EQB's Water Quality Standard Rule. Randy Sovic, DEP's Office Water Resources, also participated in the discussion.

After discussions/questions concerning the proposed EQB rule, the following comments are noted from Council members:

Bill Raney said that even though the Boards (the Environmental Quality Board and Solid Waste Management Board) are not required to come before the Council with their proposed Legislative rules, he would like to go on record as being "absolutely in opposition" to the proposed Groundwater Quality Standards' rule amendments until a full-blown, socio-economic impact statement is done. He said he does take exception to the fact that the Board can autonomously go forward with the rules without coming to the Advisory Council, and that he believes the obligations and costs will be enormous, both to the state and to industry.

Lisa Dooley stated that she is in complete agreement with Mr. Raney, and would also like to go on record as being opposed to EQB's proposed rule. She said that the proposed rule amendments, especially as they relate to the economic development part, very much concern her. She believes any economic development in West Virginia will be subject to the state's anti-degradation policy. And that policy should be reviewed and compared to surrounding states so that it is not detrimental for businesses and municipalities.

Bill Samples said that there is a multitude of concerns with this rule amendment, and that industry certainly has a major concern with it. He said that other states with anti-degradation rules may not have brought things to a stop, but certainly delayed them. He said that he would also like to go on record as being opposed to this rule amendment.

Rick Roberts asked to be included, for the record, his opposition to the proposed rule.

Director Castle said that the connection and link to DEP with regard to implementing the proposed EQB rules will definitely be taken into consideration.

Before adjournment of the meeting Bill Raney said he would like to go on record to thank Carrie Chambers for putting together the rules package and e-mailing them to Counsel in a timely fashion. Chairman Castle adjourned the meeting at 4:00 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR23 - "To Prevent and Control emissions From Municipal Solid Waste Landfills"

Type of Rule: X Legislative _____ Interpretive _____ Procedural _____

Agency: Office of Air Quality _____

Address: 7012 MacCorkle Avenue, SE _____

Charleston, WV 25304-2943 _____

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

2. Explanation of above estimates: The above estimates reflect there are no anticipated changes in costs to administer this rule.

3. Objectives of these rules: Under the CAA, the U.S. Environmental Protection Agency (U.S. EPA) issued a final rule entitled "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills", published in the Federal Register on March 12, 1996 (61 FR 9905). A subsequent direct final rule was published on June 16, 1998 (63 FR 32743) and on February 24, 1999 (64 FR 9257). All of these federal regulations were incorporated by 45CSR23, authorized by the 2000 Legislature and made effective May 1, 2000. The purpose of this rule amendment is to update 45CSR23

Appendix B
Fiscal Note For Proposed Rules
Page Two

to be consistent with the federal counterpart rule promulgated on April 10, 2000 (65 FR 18906), which made certain technical corrections to the federal rule promulgated on June 16, 1998.

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

See Section 2.

B. Economic impact on political subdivisions; specific industries; specific groups of citizens.

No impact above that resulting from the currently applicable federal requirements.

C. Economic impact on citizens/public at large.

No impact above that resulting from the currently applicable federal requirements.

Date: July 12, 2000

Signature of agency head or authorized representative:

Jarri J. Chamber

FILED

45CSR23

AUG 29 2 45 PM '00

TITLE 45
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 23
TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE
LANDFILLS

§45-23-1. General.

1.1. Scope.-- This rule establishes standards of performance and emission guidelines for municipal solid waste landfills pursuant to Section 111 of the federal Clean Air Act as amended in 1990 (CAA). It is the intent of the Director to adopt these standards by reference. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to such standards.

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

1.3. Filing Date.-- ~~April 18, 2000~~

1.4. Effective Date.-- ~~May 1, 2000~~

1.5. Incorporation by Reference. -- Federal Counterpart Regulation. The Director has determined that a federal counterpart rule exists, in accordance with the Director's recommendation, and with limited exception, this rule incorporates by reference, 40 CFR Part 60 Subparts Cc and WWW effective July 1, 1998~~9~~, as amended by the Federal Register through June 1, ~~1999~~2000.

1.6. Former Rules. -- This legislative rule amends 45CSR23 "To Prevent and Control Emissions from Municipal Solid Waste Landfills" which was filed ~~May 1, 1998~~ April 18, 2000, and which became effective ~~May 1, 1998~~ May 1, 2000.

§45-23-2. Definitions.

2.1. Definitions of all terms used, but not defined in this subsection, shall have the meaning given them in 40 CFR Part 60 Subpart WWW, as amended. Terms not defined therein shall have the meaning given to them in the federal Clean Air Act, 40 CFR Subparts A and B, or this Rule.

2.2. "Administrator" shall mean the Administrator of the United States Environmental Protection Agency or his or her designated representative.

2.3. "Director" shall mean the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

2.4. "Existing" shall mean each MSW landfill that meets both of the following conditions: (a) commenced construction, reconstruction or modification before May 30, 1991; and (b) has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition. Physical or operational changes made to an existing MSW landfill solely to comply with this rule shall not subject that landfill to the requirements of subsection 3.2.

2.5. "Municipal solid waste landfill" or "MSW landfill" shall mean an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (40 CFR §257.2) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

2.6. "Municipal solid waste landfill emissions" or "MSW landfill emissions" shall mean gas generated by the decomposition of organic waste deposited in a MSW landfill or derived from the evolution of organic compounds in the waste.

2.7. "New" shall mean each MSW landfill that commenced construction, reconstruction, or modification on or after May 30, 1991.

2.8. "NMOC", 'Non Methane Organic Compounds' shall mean nonmethane organic compounds, as measured according to the provisions of 40 CFR 60.754.

§45-23-3. Requirements.

3.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, modified, or operated a MSW landfill which results in a violation of this rule.

3.2. Each new MSW landfill shall comply with all of the applicable standards, requirements and provisions of 40 CFR Part 60 Subpart WWW, as amended including any reference methods, performance specifications and other test methods associated with Subpart WWW, which are herein incorporated by reference with the exceptions as follows:

3.2.a. In lieu of 40 CFR 60.758(a), the following provision applies: Each owner or operator of a MSW landfill subject to the provisions of 40 CFR 60.752(b) shall keep for at least 5 years up-to-date, readily accessible, on-site records of the maximum design capacity, surface monitoring design plan, the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Either paper copy or electronic format records are acceptable.

3.3. Each existing MSW landfill shall comply with all of the applicable standards, requirements and provisions of 40 CFR Part 60 Subpart Cc and 40 CFR Part 60 Subpart WWW, as referenced in 40 CFR 60 Subpart Cc, and as amended including any reference methods, performance specifications and other test methods associated with Subpart WWW, which are herein incorporated by reference with the exceptions as follows:

3.3.a. §40-60.750

3.3.b. In lieu of 40 CFR 60.752(b)(2)(i)(B), the following provision applies: The collection and control system design plan shall include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, record keeping or reporting provisions of 40 CFR 60.753 through 40 CFR 60.758 proposed by the owner or operator. In addition, the collection and control design plan must specify:

- 3.3.b.1. The date by which contracts for control system/process modifications shall be awarded, (which shall be no later than 20 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).
- 3.3.b.2. The date by which on-site construction or installation of the air pollution control device(s) or process changes will begin (which shall be no later than 24 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).
- 3.3.b.3. The date by which the construction or installation of the air pollution control device(s) or process changes capable of meeting the emission standards established under 40 CFR 60.752(b)(2)(iii) will be complete (which shall be no later than 30 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).
- 3.3.b.4. The date by which the MSW landfill will achieve compliance with 40 CFR 60.753 (which shall be no later than 30 months [except where 40 CFR 60 indicates otherwise] after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).
- 3.3.b.5. The date by which the MSW landfill will demonstrate compliance with applicable requirements by conducting a performance test in accordance with procedures specified by the Director (which shall be no later than 180 days after completion of construction or installation of the air pollution control device).

3.3.c. In lieu of 40 CFR 60.758(a), the following provision applies: Each owner or operator of a MSW landfill subject to the provisions of 40 CFR 60.752(b) shall keep for at least 5 years up-to-date, readily accessible, on-site records of the maximum design capacity, surface monitoring design plan, the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Either paper copy or electronic format records are acceptable.

§45-23-4. Director.

4.1. Any and all references in 40 CFR Part 60 to the "Administrator" are amended to be the "Director" except in the following references which shall remain "Administrator" as follows:

4.1.a. Where the federal regulations specifically provide that the Administrator shall retain authority and not transfer such authority to the State;

4.1.b. Where provisions occur which refer to:

4.1.b.1. alternate means of emission limitations;

4.1.b.2. alternate control technologies;

4.1.b.3. innovative technology waivers;

4.1.b.4. alternate test methods;

4.1.b.5. alternate monitoring methods;

4.1.b.6. waivers/adjustments to record keeping and reporting; or

4.1.b.7. applicability determinations; or

4.1.c. where the context of the regulation clearly requires otherwise.

§45-23-5. Permits.

5.1. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way limited or inapplicable with the exception as follows:

5.1.a. A control system installed at a MSW landfill solely to comply with this rule and 40 CFR 60.752(b)(2)(iii), shall not be defined as a stationary source under §45-13-2.25.a. for purposes of applicability of §45-13 permit requirements.

§45-23-6. Inconsistency Between Rules.

6.1. In the event of any inconsistency between this rule and any other existing rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

Division of Environmental Protection

Public Hearing: Rules 45CSR1, 45CSR6, 45CSR15, 45CSR16, 45CSR23, Time/Date: 8/14/2000 6:00 p
45 CSR 25, 45 CSR30 and 45 CSR 34

NAME	ADDRESS	COMMENT	
		YES	NO
1. Tina Adams	Flexsys		X
2. Kim Brown Poland	Robinson + McElwee LLP	X	
3. Liz Appel	ROBINSON + MCELWEE LLP		X
4. Dave Young	Robinson & McElwee LLP		X
5. Kathy G. Beckett	Jackson & Kelly WV Chamber		
6. [Signature]	Charleston Gazette		X
7. David M Flannery	Jackson & Kelly		X
8. Tim Mallon	AEP-WV		X
9. Lisa McClung	OAG		X
10. Karen Watson	//		X
11.			
12.			
13.			
14.			
15.			

ORIGINAL

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 23 - "To Prevent and Control Emissions From
Municipal Solid Waste Landfills".

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Air Quality, Conference Room, 7012 MacCorkle Avenue, S.E., Charleston, West Virginia, commencing at 6:03 p.m., on the 14th day of August 2000, pursuant to notice.

Missy L. Young, C.C.R.
Post Office Box 13221
Sissonville, WV 25360
(304) 984-2300 or 540-8770

1 on March 12, 1996 (61 FR 9905). A subsequent direct final
2 rule was published on June 16, 1998 (63 FR 32743) and on
3 February 24, 1999 (64 FR 9257). All of these federal
4 regulations were incorporated by 45CSR23, authorized by
5 the 2000 Legislature and made effective May 1, 2000. The
6 purpose of this rule amendment is to update 45CSR23 to be
7 consistent with the federal counterpart rule promulgated
8 on April 10, 2000 (65 FR 18906), which made certain
9 technical corrections to the federal rule promulgated on
10 June 16, 1998.

11 Upon authorization and promulgation of revisions
12 to 45CSR23, the rule will be submitted to the U.S.
13 Environmental Protection Agency as part of the State's
14 Plan for Municipal Solid Waste (MSW) Landfills.

15 The floor is now open for public comment.

16 There being nothing further, this public hearing
17 for 45CSR23 is concluded.


18 (WHEREUPON, the public hearing
19 was concluded.)

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a
Certified Court Reporter and Commissioner within and for
the State of West Virginia, duly commissioned and
qualified, do hereby certify that the foregoing is, to the
best of my skill and ability, a true and accurate
transcript of all the proceedings had in the
aforementioned matter.

Given under my hand and official seal this
22nd day of August, 2000.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

NOTICE:

ALL FEDERAL ATTACHMENTS ARE UNCHANGED. SEE THE COMMENT PERIOD TO VIEW THESE ATTACHMENTS.

significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 20, 2000.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(247)(i)(A)(3) and (c)(272) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(247) * * *
(i) * * *
(A) * * *

(3) Baseline and projected emissions inventories and ozone attainment demonstration, as contained in the South Coast 1997 Air Quality Management Plan for ozone.

* * * * *

(272) New and amended plan for the following agency was submitted on February 4, 2000, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(1) SCAQMD commitment to adopt and implement short- and intermediate-term control measures; SCAQMD commitment to adopt and implement long-term control measures; SCAQMD commitment to achieve overall emissions reductions for the years 1999-2008; SCAQMD commitment to implement those measures that had been adopted in regulatory form between November 1994 and September 1999; rate-of-progress plan for the 1999, 2002, 2005, 2008, and 2010 milestone years; amendment to the attainment demonstration in the 1997 Air Quality Management Plan for ozone; and motor vehicle emissions budgets for purposes of transportation conformity, as contained in the 1999 Amendment to the South Coast 1997 Air Quality Management Plan.

* * * * *

[FR Doc. 00-8534 Filed 4-7-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-6570-4]

RIN 2060-AC42

Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: Under the Clean Air Act (CAA), the EPA issued a final rule entitled "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills," published in the **Federal Register** on March 12, 1996 (61 FR 9905). A subsequent direct final rule, published

on June 16, 1998 (63 FR 32743) corrected errors and clarified regulatory text of the final rule. These technical corrections will correct an error in the amendatory instructions and an inconsistency between the reportable exceedances and reporting of monitoring data. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making today's rule final

without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial in nature, and do not substantively change the requirements of the NSPS/EG rule. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

DATES: These technical corrections are effective April 10, 2000.

ADDRESSES: Docket No. A-88-09 contains the supporting information used in the development of this rulemaking. The docket is located at the U.S. Environmental Protection Agency in Room M-1500, Waterside Mall

(ground floor), 401 M Street SW, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Laur, Waste and Chemical Processes Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5256, e-mail: laur.michele@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The entities potentially affected by this action include:

Category	SIC	Examples of regulated entities
Industry and Local Government Agencies	4953	Existing municipal solid waste landfills where solid waste from households is placed in or on land. Waste from commercial or industrial operations may be mixed with the household waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. While the landfills EG and NSPS (40 CFR part 60, subparts Cc and WWW) will primarily impact facilities in the Standard Industrial Classification (SIC) code 4953, not all facilities in this code will be affected by this action. To determine if your landfill is affected by the landfills EG or NSPS, see 40 CFR part 60, subparts Cc and WWW, or the technical amendments published on June 16, 1998 (63 FR 32743).

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's action will be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

I. Background

On March 12, 1996, the EPA promulgated in the *Federal Register* (61 FR 9919) EG for existing municipal solid waste landfills and the NSPS for municipal solid waste landfills. These regulations and guidelines were promulgated as subparts Cc and WWW of 40 CFR part 60. This action corrects an error in the amendatory instructions, typographic and formatting errors, and it corrects three inconsistencies in the

direct final action published on June 16, 1998.

II. Description of Corrections

A. Amendatory Instruction Error

Due to an error in the amendatory instructions for the direct final rule published in the *Federal Register* on June 16, 1998, § 60.752(b)(2)(ii) (A) and (B) and § 60.752(b)(2)(iii)(B) (1) and (2) were incorrectly removed. These technical corrections add those paragraphs back into the final rule.

B. Inconsistencies

An inconsistency exists between what constitutes a reportable exceedance for boilers and process heaters in § 60.758(c)(1)(i), and the monitoring (§ 60.756(b)(1)) and recordkeeping (§ 60.758(b)(2)) requirements for these devices. Boilers and process heaters with design heat input capacity less than or equal to 44 megawatts are required to monitor temperature and keep records. A reportable exceedance related to temperature can only occur for boilers and process heaters that are less than 44 megawatts. It was not our intent to require monitoring and recordkeeping for boilers and process heaters if their design heat input capacity is equal to or greater than 44 megawatts.

C. Typographical and Formatting Errors

A typographical error appearing in the equation in §§ 60.754(a)(1) (i), (ii) and 60.759(a)(3)(ii) is being corrected. The term "CN_{NM}MOC" is corrected to read "CN_{MOC}", meaning the concentration of non-methane organic compounds.

A typographical error appearing in § 60.754(a)(1)(ii) is being corrected. The paragraph immediately following the list of terms to the equation in this section was incorrectly duplicated from the paragraph in § 60.754(a)(1)(i). The paragraph is amended to correctly reflect the method for subtracting nondegradable solid waste when actual year-to-year solid waste acceptance rates are known.

A formatting error in § 60.756(a), introductory text, is being corrected. A comma was left out between the words "thermometer" and "other."

A typographical error appearing in § 60.757(c) is being corrected. Throughout the rule, various requirements are triggered by the emission rate cutoff of "equals or exceeds 50 megagrams per year." The term "equals or" was inadvertently omitted. This omission is being corrected to be consistent with the remainder of the rule and with our intent.

A typographical error appearing in § 60.758(c)(1)(ii) is being corrected. This section incorrectly references § 60.758(b)(3)(i) which does not exist. The correct reference is § 60.758(b)(3).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute (see

Summary), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 16, 1998 amendments to the final NSPS/EG rule **Federal Register** document.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows

the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 10, 2000. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 27, 2000.

Robert D. Brenner,
Acting Assistant Administrator, Office of Air and Radiation.

For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

Subpart WWW—[Amended]

2. Section 60.752 is amended by adding paragraphs (b)(2)(ii)(A), (b)(2)(ii)(B), (b)(2)(iii)(B)(1) and (b)(2)(iii)(B)(2) to read as follows:

§ 60.752 Standards for air emissions from municipal solid waste landfills.

- (b) * * *
- (2) * * *
- (ii) * * *
- (A) An active collection system shall:
 - (1) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control or treatment system equipment;
 - (2) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of:
 - (i) 5 years or more if active; or

- (ii) 2 years or more if closed or at final grade.

- (3) Collect gas at a sufficient extraction rate;

- (4) Be designed to minimize off-site migration of subsurface gas.

(B) A passive collection system shall:

- (1) Comply with the provisions specified in paragraphs (b)(2)(ii)(A)(1), (2), and (2)(ii)(A)(4) of this section.

- (2) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners shall be installed as required under § 258.40.

- (iii) * * *
- (B) * * *

- (1) If a boiler or process heater is used as the control device, the landfill gas stream shall be introduced into the flame zone.

- (2) The control device shall be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in § 60.756;

* * * * *

3. In § 60.754, in the equation in paragraph (a)(1)(i) the term "C_{NMOC}" is revised to read "C_{NMOC}" and paragraph (a)(1)(ii) is revised to read as follows:

§ 60.754 Test methods and procedures.

- (a) * * *
- (1) * * *

- (ii) The following equation shall be used if the actual year-to-year solid waste acceptance rate is unknown.

$$M_{NMOC} = 2L_0 R (e^{-kc} - e^{-k(t)}) C_{NMOC} (3.6 \times 10^{-9})$$

Where:

- M_{NMOC}=mass emission rate of NMOC, megagrams per year
- L₀=methane generation potential, cubic meters per megagram solid waste
- R=average annual acceptance rate, megagrams per year
- k=methane generation rate constant, year⁻¹
- t = age of landfill, years
- C_{NMOC}=concentration of NMOC, parts per million by volume as hexane
- c=time since closure, years; for active landfill c=0 and e^{-kc}1
- 3.6×10⁻⁹=conversion factor

The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value of R, if documentation of the nature and amount of such wastes is maintained.

* * * * *

4. Section 60.756 is amended in paragraph (a) introductory text by

adding a comma between the words "thermometer" and "other" and by revising paragraph (b)(1) to read as follows:

§ 60.756 Monitoring of operations.

* * * * *

(b) * * *
 (1) A temperature monitoring device equipped with a continuous recorder and having a minimum accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 degrees Celsius, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity equal to or greater than 44 megawatts.

* * * * *

5. Section 60.757 is amended by revising paragraph (c) introductory text to read as follows:

§ 60.757 Reporting requirements.

* * * * *

(c) Each owner or operator subject to the provisions of § 60.752(b)(2)(i) shall submit a collection and control system design plan to the Administrator within 1 year of the first report required under paragraph (b) of this section in which the emission rate equals or exceeds 50 megagrams per year, except as follows:

* * * * *

6. Section 60.758 is amended by revising paragraphs (b)(2) introductory text and (c)(1)(ii) to read as follows:

§ 60.758 Recordkeeping requirements.

* * * * *

(b) * * *

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii) through use of an enclosed combustion device other than a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts:

* * * * *

(c) * * *

(1) * * *

(ii) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under paragraph (b)(3) of this section.

* * * * *

§ 60.759 [Amended]

7. In § 60.759 (a)(3)(ii), the term "C_{NMOC}" is revised to read "C_{NMOC}".

[FR Doc. 00-8151 Filed 4-7-00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL52-200014; FRL-6568-6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Alabama

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the Alabama Department of Environmental Management (ADEM) for the State of Alabama on April 20, 1999, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units.

DATES: This direct final rule is effective on June 9, 2000, without further notice, unless EPA receives adverse comment by May 10, 2000. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Kimberly Bingham, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104; and at the Alabama Department of Environmental Management, Air Division, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562-9038, Bingham.Kimberly@epa.gov or Scott Davis at (404) 562-9127, Davis.ScottR@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. What Action is Being Taken by EPA Today?

We are approving the Alabama State Plan, as submitted on April 20, 1999, for the control of air emissions from HMIWIs, except for those HMIWIs located in Indian Country. When EPA developed our New Source Performance Standard (NSPS) for HMIWIs, we also developed EG to control air emissions from older HMIWIs. (See 62 FR 48348-48391, September 15, 1997, 40 CFR part 60, subpart Cc [Emission Guidelines and Compliance Times for HMIWIs] and subpart Ec [Standards of Performance for HMIWIs for Which Construction is Commenced After June 20, 1996]). The ADEM developed a State Plan, as required by sections 111(d) and 129 of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this *Federal Register* publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective June 9, 2000, unless by May 10, 2000, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective June 9, 2000.

II. The HMIWI State Plan Requirement

What is a HMIWI State Plan?

A HMIWI State Plan is a plan to control air pollutant emissions from existing incinerators which burn hospital waste or medical/infectious waste. The plan also includes source and emission inventories of these incinerators in the State.

Why Are We Requiring Alabama To Submit a HMIWI State Plan?

States are required under sections 111(d) and 129 of the Act to submit State Plans to control emissions from existing HMIWIs in the State. The State Plan requirement was triggered when