

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

FORM #3

Do Not Mark In This Box

RECEIVED  
99 AUG 18 PM 3:30  
OFFICE OF THE SECRETARY OF STATE

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

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

CITE AUTHORITY: W. Va. 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 NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_  
\_\_\_\_\_

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

Karen M. Watson, Attorney  
Authorized Signature



Executive Office  
#10 McJunkin Road  
Nitro, WV 25143-2506  
Telephone: (304) 759-0515  
Fax: (304) 759-0526

---

## West Virginia Bureau of Environment

---

Cecil H. Underwood  
Governor

Michael P. Miano  
Commissioner

July 29, 1999

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 is to give my approval for filing of the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of an Agency-Approved Rule."

Your cooperation in this matter is very much appreciated. If you should have questions or need additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely yours,

  
Michael P. Miano  
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp  
Karen Watson  
Carrie Chambers

**Questionnaire**

DATE: August 6, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection  
Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311-2599  
Phone: 304-558-4022

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:  
June 16, 1999 and July 14, 1999
  
- b. What other notice, including advertising, did you give of the hearing?
  - I. Class I legal advertisement. *Charleston Daily Mail and Charleston Gazette*
  - II. Sent a copy of the Public Notice to our agency mailing list.
  - III. DEP's "Public Notice Bulletin" (June and July issues)
  - IV. Public Notices placed on agency's Web site:  
<http://www.dep.state.wv.us/oaq/>
  - V. Press Release
  
- c. Date of Public Hearing (s) or Public Comment Period ended:  
Public Hearing -- July 19, 1999  
Public Comment Period ended -- July 28, 1999



- 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  
\_\_\_\_\_



# CHARLESTON NEWSPAPERS

P.O. Box 2993  
 Charleston, West Virginia 25330  
 Billing 348-4898  
 Classified 348-4848  
 1-800-WVA-NEWS  
 FEIN 55-0676079

INVOICE DATE	07/19/99
ACCOUNT NBR	037143002
SALES REP ID	0016
INVOICE NBR	656084001

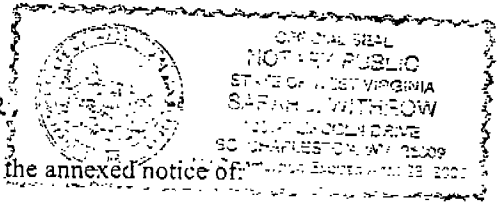
Legal pricing is based upon 63 words per column inch at a rate of \$.0925 per word.  
 Each successive insertion is discounted by 25% of the first insertion rate (\$.069375 per word).

ISSUE DATE	AD TYPE	PUB	DESCRIPTION		AD NUMBER	AD SIZE TOTAL RUN	RATE	GROSS AMOUNT	NET AMOUNT
			REFERENCE NBR	PURCHASE ORDER #					
07/17	LEGF	GZ	COMMENT PERIOD		L455179	1X1838			
			656084001			18.38	5.83	107. <sup>.16</sup> <sub>.07</sub>	
07/17	LEGF	DM	COMMENT PERIOD		L455179	1X1838			
			656084001			18.38	5.83	107. <sup>.16</sup> <sub>.07</sub>	214. <sup>.32</sup> <sub>.14</sub>
TOTAL INVOICE AMOUNT									214. <sup>.32</sup> <sub>.14</sub>

State of West Virginia.

## AFFIDAVIT OF PUBLICATION

I, Sandra Ligg of  
 THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER,  
 THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,  
 published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:



COMMENT PERIOD  
 was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County,  
 West Virginia, on the 19TH day of JULY 1999. Published during the following dates: 07/17/99-07/17/99  
 Subscribed and sworn to before me this 20 day of July  
 Printers fee \$ 214.14

Sandra Ligg  
 Notary Public of Kanawha County, West Virginia

RECEIVED  
 1999 JUL 29 P 3:08  
 WV DIV OF ENVIRONMENT  
 OFFICE OF AIR QUALITY ANNEX

**LEGAL  
ADVERTISEMENT**

**NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD**

The West Virginia Division of Environmental Protection, Office of Air Quality, hereby provides notice of the extension of the public comment period previously established for proposed revisions to the following legislative rules:

45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Disposal Areas"

45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"

45CSR3 "To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plant"

45CSR4 "To Prevent and Control the Discharge of Air Pollutants into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"

45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"

45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse"

45CSR7 "To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations"

45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides"

45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide"

45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

45CSR17 "To Prevent

**LEGAL  
ADVERTISEMENT**

and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"

45CSR18 "To Prevent and Control Particulate Air Pollution from Director Meat-Firing Devices"

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

45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR33 "Acid Rain Provisions and Permits"

45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.

Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.

Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34,

**LEGAL  
ADVERTISEMENT**

the Office of Air Quality will seek Federal delegation of authority from the U.S. Environmental Protection Agency to implement and enforce the revised standards.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

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

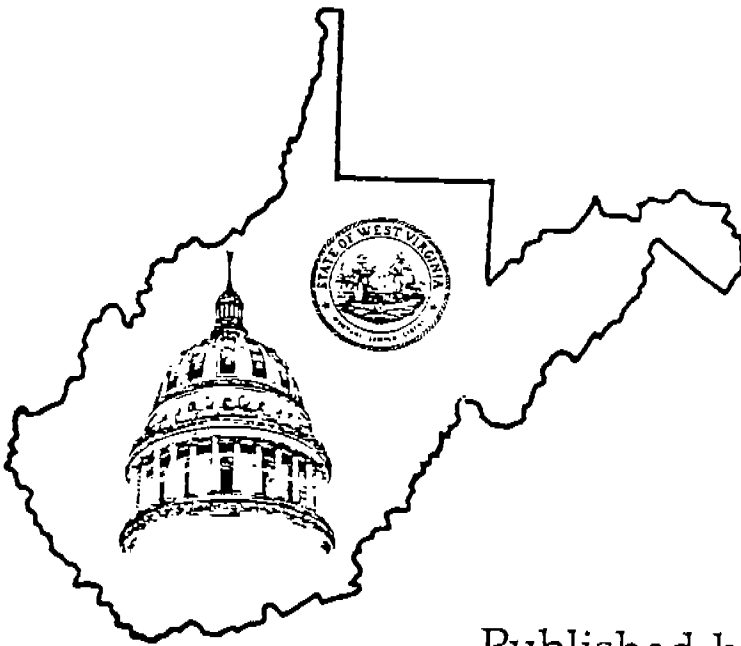
Upon authorization and promulgation of revisions to 45CSR33, the rule will be submitted to the Environmental Protection Agency as part of the State's Acid Rain Program.

The public comment period, previously set to expire at the close of the public hearing on July 19, 1999, will be extended up to and including July 28, 1999, at 5:00 p.m. to permit the receipt of written comments, which will be made a part of the rulemaking record. The public hearing set for July 19, 1999, at 6:00 p.m. will be held as previously noticed. Comments will not be accepted by e-mail. The public may submit written comments by mail or other delivery to the Office of Air Quality through July 28th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief  
Office of Air Quality  
1558 Washington St., E.  
Charleston, WV 25311-2599

Copies of the proposed legislative rules are available for public review at the Office of Air Quality's Charleston office at the above address.  
(455179)

# WEST VIRGINIA REGISTER



Published by Ken Hechler, Secretary of State

## CONTENTS

*Volume XVI*

*Issue 25*

*June 18, 1999*

*Pages 1026-1084*

*A Weekly Publication*

*Administrative Law Division*

*Judy Cooper  
Director*

*Lisa Blake  
Leah Powell  
Administrative Assistants*

*Secretary of State  
Administrative Law Division  
Bldg. 1, Suite 157K  
1900 Kanawha Blvd. E.  
Charleston, WV 25305-0770*

*(304)558-6000  
www.secretary.state.wv.us/sos*

*I. Chronological Index*

*II. Open Government Meetings Listing*

*III. Price List*

*IV. Rule Monitor*

*V. Notices*

*a. Legislative Rules*

*b. Interpretive Rules*

*c. Procedural Rules*

*d. Emergency Rules*

*e. Legislative Rule-Making Review Committee*

*VI. Legislative Interims*

*VII. Orders*

*IX. Ethics Commission Opinions*

*X. Attorney General Opinions*

*XI. Other Documents or Information Filed*

*XII. Publication Deadlines and Publication Dates*

## CHRONOLOGICAL INDEX VOLUME XVI, ISSUE 25

## PROPOSED RULES FILED FOR PUBLIC HEARING

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Air Quality (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-16)	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60 Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-17)	To Prevent & Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage & Other Sources of Fugitive Particulate Matter Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-18)	To Prevent & Control Particulate Air Pollution from Direct Meat- Firing Devices Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-23)	To Prevent & Control Emissions from Municipal Solid Waste Landfills Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities Legislative	§§22-5-1 et seq. & §§22-18-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-33)	Acid Rain Provisions & Permits Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63 Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above

## RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-16)	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60 \$5.60 w/out federal reg's \$22.80 w/federal reg's Legislative	6/16/99	7/19/99		7/31/98		HB 2533	5/20/99	6/1/99
Air Quality (45-16)	Standards of Performance for New Stationary Sources \$2.40 Legislative	6/16/98	7/21/98			Modified & Approved 12/15/98 Filed 1/5/99			
Air Quality (45-17)	To Prevent & Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage & other Sources of Fugitive Particulate Matter \$5.60 Legislative	6/16/99	7/19/99						
Air Quality (45-18)	To Prevent & Control Particulate Air Pollution from Direct Meat-Firing Devices \$5.20 Legislative	6/16/99	7/19/99						
Air Quality (45-23)	To Prevent & Control Emissions From Municipal Solid Waste Landfills \$5.80 w/out federal reg's \$9.20 w/federal reg's Legislative	6/16/99	7/19/99						
Air Quality (45-24)	To Prevent & Control Emissions From Hospital/Medical/Infectious Waste Incinerators \$4.20 Legislative	6/16/98	7/21/98		8/3/98		HB 2533	5/20/99	6/1/99
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities \$9.80 w/out federal reg's \$12.00 w/federal reg's	6/16/99	7/19/99						
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities \$7.00 Legislative	6/16/98	7/21/98		8/3/98		HB 2533	5/20/99	7/1/99



OTHER

NOTICE OF PUBLIC HEARING AND  
PUBLIC COMMENT PERIOD

July 19, 1999

On Monday, July 19, 1999 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on proposed revisions to the following legislative rules:

- 45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Disposal Areas"
- 45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"
- 45CSR3 "To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants"
- 45CSR4 "To Prevent and Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"
- 45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"
- 45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse"
- 45CSR7 "To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations"
- 45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides"
- 45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide"
- 45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"
- 45CSR17 "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"
- 45CSR18 "To Prevent and Control Particulate Air Pollution from Direct Meat-Filing Devices"

Legal Notice  
Page 2

- 45CSR23 "To Prevent and Control Emissions from Municipal Solid Waste Landfills"
- 45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR33 "Acid Rain Provisions and Permits"
- 45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.

Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.

Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan for the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval by the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan for the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34, the Office of Air Quality will seek federal delegation of authority from the U. S. Environmental Protection Agency to implement and enforce the revised standards.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U. S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

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

Upon authorization and promulgation of revisions to 45CSR33, the Office of Air Quality will submit this rule to the U. S. Environmental Protection Agency as part of the State's Acid Program.

The hearing will be held in the Office of Air Quality's Conference Room located at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral comments by the public will be accepted until the close of the hearing on July 19th and will be made a part of the rulemaking record. Comments will not be accepted by e-mail. The public may also submit written comments by mail or other delivery to the Office of Air Quality through July 19th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief  
Office of Air Quality  
1558 Washington Street East  
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 18, 1999 at the Office of Air Quality's Charleston office.

## OTHER

### NOTICE OF PUBLIC HEARING

On Thursday, July 22, 1999 beginning at 7:00 p.m., the Office of Air Quality of the West Virginia Division of Environmental Protection (WVDEP) will hold a public hearing on proposed revisions to the State Implementation Plan (SIP) to attain and maintain compliance with the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO<sub>2</sub>). The proposed plan revisions affect American Electric Power's Kummer Plant, Columbian Chemical Company, PPG Industries Inc. and Bayer Corporation, all of which are located in Marshall County, West Virginia.

The WVDEP proposes to enter Consent Orders with the aforementioned companies or, if necessary, seek modification to rule 45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides" to establish new sulfur dioxide emission limits or other requirements necessary to assure attainment of the sulfur dioxide NAAQS in Marshall County.

Upon entry of the proposed Consent Orders and/or promulgation of a revised 45CSR10, these documents, in conjunction with supporting documentation and analysis will be submitted to the United States Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act as amended.

The hearing will be held at the Grave Creek Mound Historical Site located at 801 Jefferson Avenue, Moundsville, WV 26041. Written and oral testimony by all interested parties will be accepted and made part of the record, which will be closed at the conclusion of the public hearing. Submission of comments by electronic mail will not be accepted.

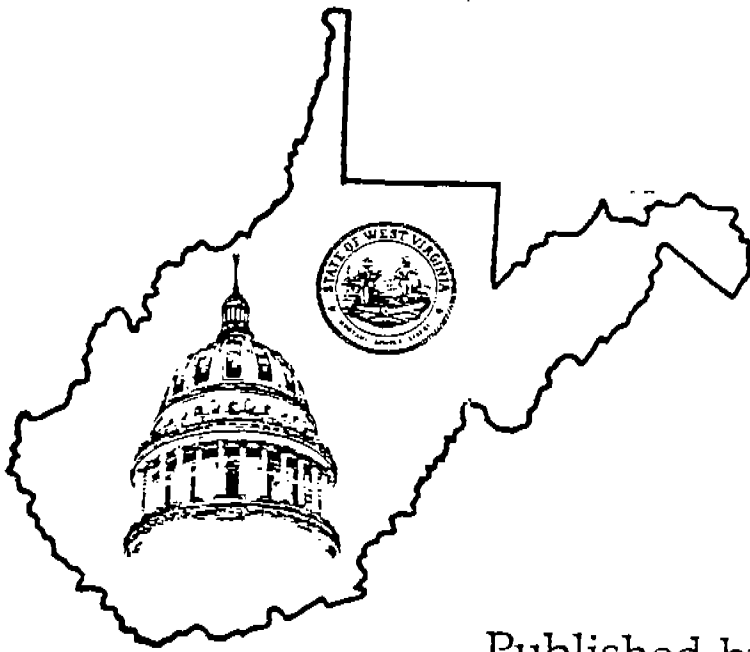
Persons interested in submitting written comments prior to the hearing should send them to:

Tim J. Carroll, Assistant Chief  
Office of Air Quality  
Northern Panhandle Regional Office  
1911 Warwood Avenue  
Wheeling, WV 26001

Copies of the draft Consent Orders and supporting documentation will be available for public review at the following locations on and after June 21, 1999.

Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311

# WEST VIRGINIA REGISTER



Published by Ken Hechler, Secretary of State

## CONTENTS

*Volume XVI*

*Issue 29*

*July 16, 1999*

*Pages 1242-1296*

*A Weekly Publication*

*Administrative Law Division*

*Judy Cooper  
Director*

*Lisa Blake  
Leah Powell  
Administrative Assistants*

*Secretary of State  
Administrative Law Division  
Bldg. 1, Suite 157K  
1900 Kanawha Blvd. E.  
Charleston, WV 25305-0770*

*(304)558-6000*

*www.secretary.state.wv.us/sos*

*I. Chronological Index*

*II. Open Government Meetings Listing*

*III. Price List*

*IV. Rule Monitor*

*V. Notices*

*a. Legislative Rules*

*b. Interpretive Rules*

*c. Procedural Rules*

*d. Emergency Rules*

*e. Legislative Rule-Making Review Committee*

*VI. Legislative Interims*

*VII. Orders*

*LX. Ethics Commission Opinions*

*X. Attorney General Opinions*

*XI. Other Documents or Information Filed*

*XII. Publication Deadlines and Publication Dates*

**CHRONOLOGICAL INDEX, VOLUME XVI, ISSUE 2B**

**PROPOSED RULES FILED FOR PUBLIC HEARING**

<b>AGENCY</b>	<b>RULE/TYPE</b>	<b>AUTHORITY</b>	<b>HEARING/COMMENT PERIOD/LOCATION</b>
Air Quality (45-16)	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60 Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-17)	To Prevent & Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage & Other Sources of Fugitive Particulate Matter Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-18)	To Prevent & Control Particulate Air Pollution from Direct Meat-Firing Devices Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-23)	To Prevent & Control Emissions from Municipal Solid Waste Landfills Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-33)	Acid Rain Provisions & Permits Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-34)	Emission Standards for Hazardous air Pollutants Pursuant to 40 CFR Part 63 Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above

**EMERGENCY RULES FILED**

<b>AGENCY</b>	<b>RULE/TYPE</b>	<b>AUTHORITY</b>	<b>EFFECTIVE DATE</b>	<b>DATE NOTICE FOR HEARING BY</b>

NO EMERGENCY RULES FILED THIS WEEK

## RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC- ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-23)	To Prevent & Control Emissions From Municipal Solid Waste Landfills \$5.80 w/out federal reg's \$9.20 w/federal reg's Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-24)	To Prevent & Control Emissions From Hospital/Medical/Infectious Waste Incinerators \$4.20 Legislative	6/16/1998	7/21/1998		8/3/1998	Modified & Amended 12/15/1998 Filed 1/5/1999	HB 2533	5/20/1999	6/1/1999
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities \$9.80 w/out federal reg's \$12.00 w/federal reg's	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities \$7.00 Legislative	6/16/1998	7/21/1998		8/3/1998	Modified & Amended 12/15/1998 Filed 1/5/1999	HB 2533	5/20/1999	7/1/1999
Air Quality (45-28)	Air Pollutant Emissions Banking & Trading \$19.20 Legislative	12/2/1998	1/5/1999		2/1/1999				
Air Quality (45-33)	Acid Rain Provisions & Permits \$5.20 w/out federal reg's \$18.80 w/federal reg's	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-33)	Acid Rain Provisions & Permits \$2.40 Legislative	6/17/1998	7/21/1998		7/31/1998	Approved 12/15/1998	HB 2533	5/20/1999	6/1/1999
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63 \$5.40 w/out federal reg's \$47.00 w/federal reg's	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63 \$2.60 Legislative	6/16/1998	7/21/1998		7/31/1998	Modified & Approved 12/15/1998 Filed 1/5/1999	HB 2533	5/20/1999	6/1/1999
Alcohol Beverage Control Administration (175-1)	Retail Licensee Operations \$6.80 Legislative	7/7/1999	8/6/1999						

LEGISLATIVE

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION  
FORM #2  
DATE: 11/11/99  
CIT: 15

Do Not Mark In This Box  
WEST VIRGINIA  
SECRETARY OF STATE  
ADMINISTRATIVE LAW DIVISION  
FORM #2  
DATE: 11/11/99  
CIT: 15

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--  
NOTICE OF EXTENSION OF COMMENT PERIOD

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45  
RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.  
AMENDMENT TO AN EXISTING RULE: YES A NO       
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 18

TITLE OF RULE BEING AMENDED: To Prevent and Control Particulate Air Pollution from Direct Metal-Firing Devices  
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:       
TITLE OF RULE BEING PROPOSED:     

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 28, 1999 AT 5:00 P.M.  
ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:  
Edward L. Krupp, Chief  
Office of Air Quality  
1558 Washington Street East  
Charleston, WV 25311-2599

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE  
Edward L. Krupp, Secretary of State

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION  
FORM #2  
DATE: 11/11/99  
CIT: 15

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--  
NOTICE OF EXTENSION OF COMMENT PERIOD

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45  
RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.  
AMENDMENT TO AN EXISTING RULE: YES X 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 NEW RULE BEING PROPOSED:       
TITLE OF RULE BEING PROPOSED:     

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 28, 1999 AT 5:00 P.M.  
ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:  
Edward L. Krupp, Chief  
Office of Air Quality  
1558 Washington Street East  
Charleston, WV 25311-2599

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE  
Edward L. Krupp, Secretary of State

OTHER

## NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

The West Virginia Division of Environmental Protection, Office of Air Quality, hereby provides notice of the extension of the public comment period previously established for proposed revisions to the following legislative rules:

- 45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Disposal Areas"
- 45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"
- 45CSR3 "To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants"
- 45CSR4 "To Prevent and Control the Discharge of Air Pollutants into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"
- 45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"
- 45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse"
- 45CSR7 "To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations"
- 45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides"
- 45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide"
- 45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"
- 45CSR17 "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"
- 45CSR18 "To Prevent and Control Particulate Air Pollution from Direct Meat-Firing Devices"
- 45CSR21 "To Prevent and Control Emissions from Municipal Solid Waste Landfills"

45CSR23

"To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR31

"Acid Rain Provisions and Permits"

45CSR34

"Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.

Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.

Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34, the Office of Air Quality will seek Federal delegation of authority from the U.S. Environmental Protection Agency to implement and enforce the revised standards.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR27, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.

Upon authorization and promulgation of revisions to 45CSR33, the rule will be submitted to the Environmental Protection Agency as part of the State's Acid Rain Program.

OTHER

The public comment period, previously set to expire at the close of the public hearing on July 19, 1999, will be extended up to and including July 28, 1999, at 5:00 p.m. to permit the receipt of written comments, which will be made a part of the rulemaking record. The public hearing set for July 19, 1999, at 6:00 p.m. will be held as previously noticed. Comments will not be accepted by e-mail. The public may submit written comments by mail or other delivery to the Office of Air Quality through July 28th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief  
Office of Air Quality  
1558 Washington Street East  
Charleston, WV 25311-2599

Copies of the proposed legislative rules are available for public review at the Office of Air Quality's Charleston office at the above address.



Stuart Rosen  
Senior Attorney

July 13, 1999

**BY OVERNIGHT MAIL**

Mr. Bill Harrington  
Office of the Secretary of State  
State Capitol Building  
157K  
Charleston, West Virginia 25305

Re: West Virginia Statutes, Section 47 2A-3(b)

Dear Mr. Harrington:

Pursuant to the provisions of the above statute, enclosed is a booklet containing BMI's music licensing agreements and related documents, along with a certification from our corporate secretary, which constitutes our current filing of such materials under the Act. This complete set of agreements should be substituted for the agreements filed last year.

I understand that there is no fee for filing these materials.

If you have any questions or comments about the enclosures, please feel free to contact me. In addition, I would appreciate your acknowledging receipt of this letter by signing and returning an extra copy in the enclosed envelope.

Very truly yours,

Stuart Rosen

RECEIVED: *W. N. Harrington*

**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 in 1990 (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.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

The proposed rule is required to control air pollutant emissions from municipal solid waste landfills pursuant to section 111 of the federal Clean Air Act of 1990. USEPA promulgated the New Source Performance Standards (Subpart WWW) and Emission Guidelines (Subpart Cc) for municipal solid waste landfills on March 12, 1996. Amendment of this rule is proposed to adopt by reference definitions, technical amendments, and corrections which appeared in the direct final notice published on June 16, 1998 (63 FR 32743) and on February 24, 1999 (64 FR 9258).

**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 their June 10, 1999 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. There were no substantive changes as a result of their discussion. (See attached minutes of that meeting.)

## MINUTES

### ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

June 10, 1999, Director's Conference Room, Nitro

The sixteenth meeting of the DEP Advisory Council was held Thursday, June 10, 1999, in the Director's Conference Room located in Nitro. Chairman Mike Miano called the meeting to order at 10:00 a.m.

#### ATTENDING:

#### Advisory Council Members:

Mike Miano, Chairman  
Jacqueline Hallinan  
William Raney  
Rick Roberts  
William Samples

#### Environmental Protection:

Bill Adams	Pam Nixon
Andy Gallagher	Rocky Parsons
Tony Grbac	Cap Smith
Randy Huffman	Charlie Sturey
Mike Johnson	Barbara Taylor
Mike Lewis	Karen Watson
Robert Keatley	Mike Zeto

1) Review and Approval of March 22, 1999 Minutes. Chairman Miano called the meeting to order at 10:00 a.m. The first item on the agenda was approval of the minutes of the March 22 Advisory Council; they were approved as written.

2) Discussion of Proposed Rule Amendments - 2000 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's new rule-making procedure that was implemented by Director Miano in September 1998 to involve the 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 DEP's proposed legislative rule changes before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

Chairman Miano said he would like to begin by saying he hoped all Council members had received their draft rules by E-mail without any complications and they were able to review them before the meeting. He informed the Council that due to the large number of rules being proposed for the 2000 Legislative Session, DEP's program offices would review them with the

Council as thoroughly as possible, in the allotted time frame, and try to answer any questions or concerns the Council may have.

The following Office of Air Quality's proposed rule amendments were discussed by Karen Watson, OAQ, with assistance from Richard Keatley, also from the OAQ office:

- **45CSR1 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COAL REFUSE DISPOSAL AREAS"**
- **45CSR2 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM COMBUSTION OF FUEL IN INDIRECT HEAT EXCHANGERS"**
- **45CSR3 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF HOT MIX ASPHALT PLANTS"**
- **45CSR4 - "TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS"**
- **45CSR5 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS"**
- **45CSR6 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE"**
- **45CSR7 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MANUFACTURING PROCESSES AND ASSOCIATED OPERATIONS"**
- **45CSR10 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE EMISSION OF SULFUR OXIDES"**
- **45CSR12 - "AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE"**
- **45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"**
- **45CSR17 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER"**
- **45CSR18 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM DIRECT MEAT-FIRING DEVICES"**
- **45CSR23 - "TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS"**
- **45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES"**
- **45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"**
- **45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"**

Karen began by bringing the Council up to date on the status of two OAQ rules that were filed during the last session (or late in the session). 45CSR8 revised the ambient air quality for sulfur oxides and particulate matter, and 45CSR9 pertained to ambient air quality standards for carbon monoxide and ozone. The DC Circuit Court of Appeals has ordered EPA to show how they arrived at the new standards - EPA may go back to the previous standards. Karen also apprised the Council on the N<sub>ox</sub> State Implementation Plan. The Circuit Court stayed the implementation of that rule and there are no plans to develop any other amendments in the

immediate future. 45CSR28, which is the emissions trading rule that was filed late in the 1999 Session, was not taken up by the Legislature, but plans are to put the rule on the July agenda of the Interim Legislative Committee.

Karen explained the reason for the unusually large number of DEP rules that are being filed for the next Legislative Session. She informed the Council that several of the rules were outdated and were amended for consistency and streamlining, and are a result of months of on-going meetings with stakeholders – involving both the regulated community and citizens. A particulate matter and sulfur oxide work group was also involved. Those rule amendments as a result of the stakeholders process include: 45CSR1 (which is being repealed and replaced with language in 45CSR5), 45CSR2, 3, 4, 5, 6, 7, 10, 12, 17, and 18 (which is being repealed since the rule is no longer deemed necessary). The amendments to the remainder of the rules, 45CSR16, 23, 25, 33, and 34 were necessary to adopt by reference definitions, clarifications, technical amendments, etc., recently adopted by US EPA.

After several minutes of discussion, the Advisory Council recommended to the Director that the following amendments be made to the OAQ rules:

*Mr. Samples pointed out that 45CSR2 and 45CSR7 contain different definitions for the term "opacity." The agency responded that this discrepancy was inadvertent and the language should be as it is in 45CSR2. The agency agreed to revise 45CSR7, subsection 2.23, accordingly.*

*Mr. Larry Harris was unable to attend the meeting; however, he expressed the following comments on 45CSR10 and 45CSR33 by e-mail. He stated that the State's rules should be more stringent than the federal counterpart regulations, since the State's streams are being adversely impacted. The agency responded that, at this point in time, it does not possess sufficient evidence to make the written finding that is required by WV Code §22-2-3a before promulgating a rule which is more stringent than a counterpart federal regulation.*

Cap Smith and Mike Zeto discussed the following Office of Waste Management proposed rule amendments:

- 33CSR2 - "Sewage Sludge Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"

Mike Zeto briefed the Council on the proposed amendments to 33CSR2. He stated that in 1996 the Legislature mandated DEP to perform a study on soil limitations for sewage sludge land application sites. These amendments (as a result of the study) were to be proposed by June 30, 1999. Other amendments to the rule include specifying the analytical method used for soil analysis, placing conditions on variances from the soil limits for land application sites, providing an incentive for municipalities to produce higher quality compost products, and adjusting the sewage sludge limits for four metals. Mr. Zeto told the Council these amendments are being proposed to update other related areas of the rule in an attempt to provide better management of sewage sludge within the state.

Cap Smith discussed 33CSR20 with the Council. He informed the Council that amendments are proposed in section 2 of the rule that will allow the Office of Waste Management to delist hazardous wastes, which has previously been handled by EPA. The other significant amendments that are being proposed by adoption of the Federal Register pertain to revision standards for owners and operators of closed and closing hazardous waste management facilities, post closure permit requirements, and the closure process. These amendments are referenced throughout the rule and will hopefully expedite site cleanup while maintaining environmental protection.

*There were several minutes of discussion on OWM's proposed rule amendments; however, no recommendations were made to the Director concerning the amendments.*

Mike Lewis, Office of Oil and Gas, discussed the following new proposed rule:

- **35CSR7 - "Well Operations - Within and Around Gas Storage Reservoirs"**

Mike informed the Council that 35CSR7 is a proposed "new" rule for the O&G Office. The rule is needed to provide protection of the environment, the public, and the state's natural gas resources. It is the intent of the proposed rule to accomplish this by addressing certain operating procedures that oil and gas and gas storage operators are to use when drilling into or through a gas storage reservoir or the gas storage reservoir protective area. In order to assure absence of leaking gas, the proposed rule requires gas storage operators to conduct monitoring and inspections of gas storage wells.

*There were no questions or discussion by the Council on this proposed rule.*

The following proposed rules were discussed by the Office of Mining and Reclamation:

- **38CSR2 - "Surface Mining and Reclamation Rule"**
- **38CSR2A - "Rules for Mining and Restoration for Sandstone, Limestone, and Sand"**
- **38CSR2B - "RULES FOR MINING AND RECLAMATION OF MINERALS OTHER THAN COAL"**

Ed Griffith, Office of Surface Mining, discussed the proposed amendments to the Surface Mining and Reclamation Rule. Ed told the Council that there are only minor amendments being proposed to this year's rule. The proposed definition of "woodlands" in subsection 2.136 relates to the utilization of commercial woodlands in Approximate Original Contour variance areas. This change is being proposed in order for the state to meet the federal policy that is expected to change in July 1999. The proposed amendment to change the bonding requirements of mining operations that request variances from contemporaneous reclamation to the maximum amount per acre bond (\$5,000 per acre) is found in subdivision 14.15.f. All other amendments are being proposed in order to meet the requirements of the Office of Surface Mining's program amendments.

Rocky Parsons, OMR's Philippi Office, next addressed OMR's proposed rules 38CSR2A and 2B. Rocky explained to the Council members that 38CSR2B has been in place since 1983 and regulates all minerals other than coal. However, in accordance with the requirement that separate rules for limestone, sandstone, and sand are to be promulgated, DEP is proposing

38CSR2A which will regulate only those minerals - 38CSR2B will regulate all minerals other than limestone, sandstone, sand, and coal. Both proposed rules will regulate roads, blasting, drainage control, methods of operation, excess spoil disposal, revegetation, mapping, transfer of permits, permit renewals, revisions and incidental boundary revisions. 38CSR2A will provide provisions for restoration and 38CSR2B will include provisions for reclamation. Rocky gave the Council a brief history on the roadblocks the agency has encountered in the past several years in their attempt to amend the quarry statute. He said since the agency has been unsuccessful in that approach, it has become necessary to try to accomplish this through rule making. He informed the Council of a public meeting held the previous week to discuss the two proposed rules. He said the meeting was well attended and he believes the rules were well received by everyone in attendance.

*The three OMR proposed rules were discussed by the Council members. Bill Raney said that although Rocky stated that the quarry rules have been well received by industry and the citizens, he is concerned about whether there has been enough time for the review of the proposed rules after they were drafted. He believes there would be a smoother transition into the rule making process, i.e., the public hearing/comment period, etc., if there had been more involvement from outside DEP during the drafting of the rules.*

*Mr. Larry Harris commented by e-mail 38CSR2A and 2B. His question is whether the siltation measures include silt fences where runoff might enter streams. He said it is not apparent what best management practices are for this situation, and he wonders if it needs to be spelled out. He knows of some operations in quarries where streams muddy after rainfalls, such as the Elkins and Waco quarries near Snowshoe, and he feels this is harming the streams. Do the new rules address this?*

*Rocky Parsons responded by saying that design criteria for drainage control structures is found in the technical handbook. Silt fences are not adequate for sediment control. The drainage system must be designed to hold .125 ac/ft of sediment for each acre of disturbed land. All runoff must pass through a drainage control structure. There is a provision for less sediment control (1/2 factor) for certain circumstances as approved by the Director. Effluent limits as established in the NPDES permit must be met.*

Tony Grbac, Office of Surface Mining, addressed the following rule:

**199CSR1 - "SURFACE MINING BLASTING RULE"**

Tony began by briefing the Council on the history of the Surface Mining Blasting Rule. This rule is being proposed to comply with SB681 - passed during the last session. This bill created the Office of Explosives and Blasting and the Office of Coalfield Community Development, which is under the West Virginia Development Office. The proposed rule will regulate blasting laws and rules associated with all surface-mining operations. All duties currently performed by OMR related to blasting, and all rules which now regulate blasting (38CSR2C) will be transferred to this new office. Besides regulating blasting on all surface mining operations, it will also implement and oversee pre-blast survey processes; maintain and operate a system to receive and address questions, concerns and complaints relating to mining

operations; determine the qualifications for individuals and firms performing pre-blast surveys; establish the education, training, examination and certification of blasters; administer a claims process for property damage caused by blasting; and conduct a study of blasting and make recommendations regarding any appropriate rule or code changes.

Tony explained that the revenue generated by the proposed fee in 199CSR1 (one-half cent times the number of pounds of explosive material used during the preceding month for any purpose on the surface mining operations) would fund both the offices, as required by SB681. After one year of collection, both offices are to report to the Legislature as to whether the revenue collected is sufficient to operate both offices.

*After several minutes of discussion between DEP and the Council members, Bill Raney expressed his concern in filing the rule for public hearing in the specified time frame. Mr. Raney asked if anyone outside DEP has been involved in drafting the rule. OMR answered by saying the rule was drafted by several staff within OMR. Mr. Raney replied that he believes there will be serious concerns with this rule once industry has had an opportunity to review it. He believes the rule drafting process definitely needs input from firms and individuals outside DEP, and he thinks the process will go smoother once everyone has had the opportunity to address their concerns. Mr. Raney recommended that the Director withhold this rule from the list of rules DEP proposes to file for public hearing/comment period in the coming week to give all interested parties a chance to participate in drafting the rule.*

*After discussion of this recommendation, Chairman Miano said he believes the best approach would be to continue with the filing of the proposed rule for public hearing, start the rule in the normal process and time frame, and in the meantime he would commit to putting together a work group of interested parties to discuss the rule. If DEP feels that more time is needed once the group begins their work on the rule, he will consider the possibility of either extending the comment period or filing for another public hearing. He said he will also decide in the near future whether DEP will file the rule as an "Emergency Rule" since HB 681 will become effective on June 11.*

*Council members also pointed out a typographical error in subdivision 3.9.a.3. of the rule relating to cross-references that will be corrected by DEP.*

Barb Taylor and Mike Johnson, Office of Water Resources, briefed Council on the following rules:

- 47CSR57A - "Groundwater Protection Standards at Steam Electric Generating Facilities"
- 47CSR26 - "Water Pollution Control Permit Fee Schedule"
- 47CSR31 - "State Water Pollution Control Revolving Fund Program Rule"

Barb described the proposed "new" rule relating to Groundwater Protection Standards at Steam Electric Generating Facilities. She noted that the rule is a result of a Notice of Intent filed on October 24, 1994, by the West Virginia Steam Electric Generation Industry, with the Director of DEP, in accordance with 47CSR57 to apply for a class variance for all West Virginia power stations and associated disposal sites. At that time, DEP provided AEP and AP with the

opportunity to conduct a four-year study to gather the necessary data to support their variance request. The objectives were met by assembling and reviewing data, estimating potential impacts to receptors, and performing an economic assessment impact analysis to the industry, commercial enterprises, and citizens at large if compliance with the Groundwater Protection Act were required without benefit of the variances. After review of the four-year study, the Director determined that granting this request for a variance at these locations would not pose adverse effects to human health or the environment. There are no human or environmental sensitive receptors between the coal storage areas or as ponds; therefore, it is unlikely there will be adverse affects. Barb gave each member a copy of the four-year study on which the Director made his determination.

Chairman Miano told Council that DEP is definitely willing to look at such cases where extensive research and study have been done by the regulated community to back up their findings before granting such variances, and believes DEP will see more studies like this in the future.

Barb next apprised the members on the proposed amendments of the Water Pollution Control Permit Fee Schedule. She stated that amendments are being proposed as a result of HB 2684, passed March 11, 1999, and effective ninety days from passage. The Director is required to implement an emergency rule to implement the fee schedule authorized by the amendments by July 1, 1999. This rule was filed as an "Emergency Rule" on June 7, 1999.

Mike Johnson, Office of Water Resources' Construction Assistance Office, briefed the Council on 47CSR31 - the Water Pollution Control Revolving Fund Program rule. The amendments to this rule are being proposed to allow the State Revolving Fund low interest terms to be extended from 20 years to 30 years for communities that qualify as "disadvantaged." There is only one other state in the country to receive such approval from EPA. Mike informed the Council that he was only recently made aware of this extension by EPA to extend the low interest loans from 20 to 30 years while attending a meeting out of state. This rule was filed as an "Emergency Rule" on May 24, 1999.

***Council members unanimously agreed that Mike Johnson should be commended for gathering this information and proposing the amendment to the rule that will enable disadvantaged communities to immediately take steps toward constructing watershed projects that will provide affordable monthly sewer rates.***

#### Open Discussion:

Chairman Miano and Council members expressed their compliments to the program offices for all their hard work, especially with the stakeholders process -- it is obvious a lot of hard work has gone into the process in order to make their efforts more productive.

Bill Raney asked a question relating to the "More or Less" Stringency statement that appears on the front of some DEP rules, but not on others, and voiced his concern if DEP is paying close attention to this, or if the same statement is appearing with all proposed rules. Carrie Chambers from the Director's Office explained that statement was once required to be included in the "General" section of each rule; however, it is now placed in the briefing document that is attached to each rule, and required by the Secretary of State's Office and the

Legislative Rule-Making Review Committee, before it is filed. She went on to explain that with the rush to get draft copies of the rules to Council members as soon as possible, some of the Briefing Documents had not been completed, but would be attached to all DEP rules before they are filed for public hearing. Chairman Miano went on to say it is his belief that all program offices are carefully scrutinizing each rule before that decision is made.

Chairman Miano thanked Council for taking time from their busy schedules to review the extensive list of DEP's proposed rules. He informed the Council that the minutes would be left open for comment until Wednesday, June 16, at which time the minutes will be attached to the rules and filed with the Secretary of State's Office and the Legislative Rule-Making Review Committee for notice of public hearing/comment period.

Before adjourning the meeting, the Council informed Chairman Miano that they would prefer beginning future meetings at 10:00 a.m., instead of the usual time of 1:00 p.m. The meeting was then adjourned at 3:30 p.m.

## APPENDIX B

### FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45 CSR 23 - "To Prevent and Control emissions From Municipal Solid Waste Landfills"

Type of Rule:         Legislative         Interpretive         Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East  
Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
Estimated Total Cost	\$ 500	\$ -0-	\$ 1000	\$ 500	\$ 500
Personal Services	500	-0-	1000	500	500
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 proposed rule is required to control air pollutant emissions from municipal solid waste landfills (MSW) pursuant to section 111 of the federal Clean Air Act of 1990. USEPA promulgated the New Source Performance Standard (Subpart W) and Emission Guidelines (Subpart Cc) for municipal solid waste landfills on March 12, 1996, and definitions, technical amendments, and corrections which appeared in the direct final notice published on June 16, 1998 (63 FR 32743) and on February 24, 1999 (64 FR 9258). Most costs anticipated to be incurred in the implementation of Subpart W and Cc will be covered under prior budget estimates for implementing Title V of the Clean Air Act, as amended, under 45CSR30 authorized by the Legislature during the 1994 session and approved (interim approval) by the U.S. Environmental Protection Agency by Final Rule issued on November 16, 1995. The program cost estimates in Item 1 reflect only the increased costs for state

Appendix B  
Fiscal Note For Proposed Rules  
Page Two

implementation of those newly adopted standards which may affect minor sources. Staff time representing approximately 0.05 FTE is anticipated for the regulation of these additional facilities.

3. Objectives of these rules:

The proposed rule is required to control air pollutant emissions from MSW landfills pursuant to section 111 of the federal Clean Air Act of 1990. USEPA promulgated the NSPS (Subpart WWW) for MSW Landfills on March 12, 1996. The Director intends to adopt associated reference methods, performance specifications and other test methods which are appended to such standards. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act, as amended.

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: 6/11/99

Signature of agency head or authorized representative:

Karen G. Watson

Karen G. Watson, Attorney

45CSR23

RECEIVED

TITLE 45

99 AUG 15 PM 3:30

LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

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.-- ~~May 1, 1998~~

1.4. Effective Date.-- ~~May 1, 1998~~

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 WWWW effective on ~~March 12, 1996~~, July 1, 1998, as amended by the Federal Register through June 1, 1999.

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, and which became effective May 1, 1998.

**§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 WWWW, 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 ~~D~~director of the ~~West Virginia~~ ~~D~~division of ~~E~~environmental ~~P~~rotection or ~~his or her designated representative~~: 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 ~~or began accepting waste~~ 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 60.752(b)(2)(ii), the provisions of paragraphs 1. and 2. below shall apply:~~

~~3.3.c.1. Install a collection and control system that effectively captures the gas generated within the landfill as required by 40 CFR 60.752(b)(2)(i) within 30 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year, unless Tier 2 or Tier 3 calculations demonstrate that the NMOC emission rate is less than 50 megagrams per year, as specified in 40 CFR 60.757(e)(1) or~~

~~(2).~~

~~3.3.e.2. The provisions of 40 CFR 60.752(b)(2)(ii)(A) and (B) apply as stated therein.~~

~~3.3.d. In lieu of 40 CFR 60.757(a)(1) the following provision applies: The initial design capacity report shall be submitted by the effective date of this rule plus 90 days.~~

~~3.3.e. In lieu of 40 CFR 60.757(b)(1)(i), the following provision applies: The initial NMOC emission rate report shall be submitted by the effective date of this rule plus 90 days and may be combined with the initial design capacity report required in 40 CFR 60.757(a). Subsequent NMOC emission rate reports shall be submitted annually, thereafter, except as provided for in 40 CFR 60.757(b)(1)(ii) and 40 CFR 60.757(b)(3).~~

~~3.3.f.3.3.b.~~ 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.

transiting the ICW once the last tall ship in the parade clears the Savannah River and Fields Cut junction.

(3) From 2 p.m. until 5 p.m. EDT on July 3, 1998, and from 8 a.m. until 11 a.m. EDT on July 6, 1998, all waters bounded by the south bank of the Savannah River to the center of the Savannah River Channel, from the Talmadge Bridge to position 32-04.45, 081-04.45W. During these times no vessel shall be allowed to enter these safety zones unless authorized by the Captain of the Port.

(4) From 9 p.m. to 11 p.m. EDT on July 4, 1998, a 300 foot radius around a fireworks staging area in approximate position 32-05N, 081-05W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

(5) From 8 a.m. to 2 p.m. EDT on July 6, 1998, the center 300 feet of the Savannah River channel from the Talmadge Bridge to the entrance of Bloody Point Range. Vessels that cannot safely navigate outside of this safety zone and desire to depart the port of Savannah on July 6, 1998, would be required to begin the outbound transit in sufficient time to clear the Savannah Riverfront area prior to 8 a.m. Vessels that cannot safely navigate outside of this safety zone and desire to enter the port of Savannah on July 6, 1998, would be required to clear the Savannah Riverfront area prior to 8 a.m. If unable to clear the Savannah Riverfront area by 8 a.m., these vessels would be required to start the inbound transit after 2 p.m. The Captain of the Port will allow vessel traffic to resume outbound transits utilizing the entire navigational channel when the last tall ship in the parade clears longitude 080-51W. Vessels using the ICW will not be allowed to cross the Savannah River at the junction of the Fields Cut once the parade approaches within one (1) nautical mile of this area. Vessels will be allowed to resume transiting the ICW once the last tall ship in the parade clears the Savannah River and Fields Cut junction.

(6) From 10 a.m. to 2 p.m. EDT on July 6, 1998, an area bounded by 32-00.19N, 080-44.07W, 31-59.35N, 080-43.08W, 32-00.59N, 080-41.32W, and 32-01.43N, 080-42.28W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

**Note:** The regulations specified in paragraphs (a)(1) and (a)(6) apply only within the navigable waters of the United States. In the waters within the offshore staging area and pre-race staging area that are outside the navigable waters of the United States, the following nonobligatory guidelines apply.

(i) All unaffiliated Americas' Sail vessels should remain clear of the staging area and pre-race staging area and avoid interfering with any Americas' Sail participant or Coast Guard vessel. Interference with anchoring or race activities may constitute a safety hazard warranting cancellation or termination of all or part of the Americas' Sail activities by the Captain of the Port.

(ii) Any unauthorized entry into these zones by unaffiliated vessels constitutes a risk to the safety of marine traffic. Such entry will constitute a factor to be considered in determining whether a person has operated a vessel in a negligent manner in violation of 46 U.S.C. 2302.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into these safety zones is subject to the following requirements:

(1) These safety zones are closed to all non-participating vessels, except as may be permitted by the Captain of the Port or a representative of the Captain of the Port.

(2) The "representative of the Captain of the Port" is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Savannah, GA, to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Non-participating vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 652-4353. Vessels assisting in the enforcement of the safety zone may be contacted on VHF-FM channel 16. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a Coast Guard vessel patrolling the perimeter of the safety zone.

(5) The Captain of the Port Savannah will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety zones and restrictions imposed.

(c) *Dates.* This section becomes effective at 9 a.m., Eastern Daylight Time (EDT) on July 2, 1998, and terminates at 2 p.m., EDT on July 6, 1998.

Dated: June 3, 1998.

R.E. Seebald,

Commander, U.S. Coast Guard, Captain of the Port, Savannah, Georgia.

[FR Doc. 98-15965 Filed 6-15-98; 8:45 am]

BILLING CODE 4910-15-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[AD-FRL-6106-8]

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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** This action amends, corrects errors, and clarifies regulatory text of the "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills," which was issued as a final rule and guideline on March 12, 1996.

**EFFECTIVE DATE:** This rule will become effective August 17, 1998 without further notice unless the Agency receives relevant adverse comment by July 16, 1998. Should the Agency receive such comments, it will publish a timely document withdrawing this rule.

**ADDRESSES:** Comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (MC-6102), Attn: Docket No. A-88-09/Category V-D, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA request that a separate copy also be sent to the contact person listed below. Refer to **SUPPLEMENTARY INFORMATION** for information regarding electronic submittal of comments.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice and analyses performed in developing this rule, 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 number (919) 541-5256. For implementation issues, contact Mary Ann Warner, Program Review Group, Information Transfer and Program Integration Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1192. For information on the Landfill

Model, contact Susan Thorneloe through the internet at: thorneloe.susan@epamail.epa.gov. For information concerning applicability and rule determinations, contact the appropriate regional representative:

#### Region I

Greg Roscoe, Air Programs Compliance Branch Chief, U.S. EPA/ASO, Region I, JFK Federal Building, Boston, MA 02203, (617) 565-3221

#### Region II

Christine DeRosa, U.S. EPA, Region II, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-4022

#### Region III

James Topsale, U.S. EPA/3AP22, Region III, 841 Chestnut Building, Philadelphia, PA 10107, (215) 566-2190

#### Region IV

R. Douglas Neeley, Chief, Air and Radiation Technology Branch, U.S. EPA, Region IV, 61 Forsyth St., SW., Atlanta, GA 30303, (404) 562-9105

#### Region V

George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA/5AE-26, Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 353-2088

#### Region VI

John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2733, (214) 655-7220

#### Region VII

Ward Burns, U.S. EPA/RME, Region VII, 726 Minnesota Avenue/ARTDAPCO, Kansas City, KS 66101-2728, (913) 551-7960

#### Region VIII

Vicki Stamper, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2466, (303) 312-6445

#### Region IX

Patricia Bowlin, U.S. EPA/RM HAN/17211, Region IX, 75 Hawthorne Street/AIR-4, San Francisco, CA, (415) 744-1188

#### Region X

Catherine Woo, U.S. EPA, Region X, Office of Air Quality Planning and Standards-107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553-1814

**SUPPLEMENTARY INFORMATION:** A companion proposal to this final rule is being published in the proposed rules section of today's *Federal Register* and is identical to this direct final rule. Any

comments on this direct final rule should address the companion proposal. The proposal provides information on addresses for submittal of comments. If relevant adverse comments are timely received, such comments will be addressed in a subsequent final rule based on the proposed rule. A document informing the public that the direct final rule did not take effect will be published. If no relevant adverse comments are timely filed on any provision of this direct final rule, then the entire direct final rule will become effective 60 days from today's *Federal Register* document and no further action will be taken on the companion proposal published today.

#### Background

On March 12, 1996 (60 FR 9918), the U.S. Environmental Protection Agency (EPA) promulgated in the *Federal Register* standards of performance for new sources (NSPS) for municipal solid waste landfills and emission guidelines for existing municipal solid waste landfills. These regulations and guidelines were promulgated as subparts WWW and Cc of 40 CFR part 60.

This document revises the wording of the applicability sections of subparts WWW and Cc and related definitions to clarify the intent regarding which landfills are subject to subpart WWW versus subpart Cc. This notice also corrects typographical and cross referencing errors. A few editorial modifications are also being made to clarify the intent of certain provisions and correct inconsistencies between different sections of subpart WWW. These changes do not significantly modify the requirements of the regulation.

#### I. Description of Changes

##### A. Definitions

The NSPS applies to landfills that commence construction, modification, or reconstruction on or after May 30, 1991. A definition of "modification" is being added. The definition is specific to landfills but is consistent with the intent of section 60.14 of the NSPS General Provisions. Application of the NSPS General Provisions to landfills is problematic due to the fact that a landfill is not a typical production or manufacturing facility for which the General Provisions originally were written. The following discussion demonstrates the considerations made to apply the NSPS General Provisions to landfills. This limited definition of modification is uniquely appropriate for landfills, and EPA does not believe at

this time that such a rationale could be extended outside the landfill context.

As stated in 40 CFR 60.14(a), modifications are physical or operational changes to an existing facility that result in an increase in the emissions of any pollutant to which a standard applies. However, with respect to landfills, the concept of a physical or operational change leading to an increase in emissions is of limited application, since unlike more traditional sources of air pollution, increased emissions at landfills are based on the amount and character of waste placed in the landfill, rather than through physical or operational changes to equipment or production methods. Equipment at a landfill is essentially the landfill itself and while production can be roughly equated to the amount of waste placed in the landfill, total "production" for the entire life of the facility is controlled through the amount of design capacity specified in the permit. Although the amount and character of waste present at any given time may vary within the design capacity constraints set forth in the permit, emissions over the total life of the facility depend on the amount of waste a landfill can accept pursuant to its permitted design capacity. Accordingly, for landfills, it makes sense to consider only those physical or operational changes that increase the size of the landfill beyond its permitted capacity as modifications subjecting an existing facility to the NSPS. Therefore, if the design capacity of a landfill increases, a change leading to an increase in emissions is assumed to have occurred. For purposes of this NSPS, a landfill is considered modified and subject to the NSPS if its design capacity has been increased after May 30, 1991.

Operational changes at landfills, such as increasing the moisture content of the waste, increasing the physical compaction on the surface, changing the cover material or thickness of daily cover, and changing bailing or compaction practices, can typically be accomplished without a capital expenditure. Consequently, the landfill definition of modification does not include such operational changes. Existing landfills that make an operational change but do not increase the horizontal or vertical dimensions of the landfill continue to be subject to the emission guidelines rather than the NSPS. Therefore, for landfills, the only change which would constitute a modification is an increase in design capacity caused by an increase in the permitted horizontal or vertical dimensions of the landfill.

Reconstructions are unlikely for landfills. As specified in the NSPS General Provisions, reconstructions are "the replacement of components of an existing facility [landfill] to such an extent that: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new facility [landfill] \* \* \*." The Agency knows of no situation where this would occur at a landfill.

The definition of "design capacity" is being amended to clarify that the design capacity is determined by the *most recent* permit issued by the State, local, or Tribal agency responsible for regulating the landfill plus any in-place waste not accounted for in that permit. This clarification addresses cases where a landfill may have multiple permits. It makes sense to use the most recent permitted design capacity to determine whether a landfill exceeds the design capacity exemption level. The words "construction or operating" permit have also been deleted and substituted with the word "permit." The use of the term "operating permit" could be misinterpreted to mean a title V permit. The permit intended was the State, local, or Tribal agency permit that establishes the design capacity.

The definition of design capacity is also being clarified to state that a permit may express design capacity on a volumetric or a mass basis. The revised definition also states that the owner or operator may choose to convert the design capacity from volume to mass or from mass to volume, using a site-specific density, in order to demonstrate that the design capacity is less than 2.5 million Mg or 2.5 million m<sup>3</sup>. If the density changes, the design capacity changes. Therefore, an owner or operator who converts from volume to mass or mass to volume must annually calculate the site-specific density. These revisions to the definition are clarifications that do not change the intent of the NSPS and emission guidelines as promulgated on March 12, 1996.

Under the NSPS and emission guidelines, design capacity is used to determine whether or not a landfill is below the design capacity cutoff. If the design capacity in the permit is below either 2.5 million megagrams (Mg) or 2.5 million cubic meters (m<sup>3</sup>), the landfill is exempt (except for design capacity reporting requirements). A landfill with a volumetric permit may choose to calculate design capacity on a mass basis (or vice versa) based on a site-specific density. The initial design capacity report must provide supporting documentation of this calculation. If such a conversion is made, records must

also be kept of the annual recalculation of the site-specific density and design capacity with supporting documentation.

For example, a landfill may have a permitted design capacity greater than 2.5 million m<sup>3</sup> by volume; but the landfill may have documented calculations showing that, based on the actual waste density, the design capacity is less than 2.5 million Mg by mass. Because the design capacity is less than 2.5 million Mg, the landfill is below the design capacity cutoff. If such a landfill changes its compaction practices such that the density of the waste placed in the landfill increases, the calculated design capacity could become greater than 2.5 million Mg, and the landfill would then need to submit an amended design capacity report. If the revised design capacity is over 2.5 million m<sup>3</sup> and 2.5 million Mg, the landfill must estimate emissions and must install controls if emissions are greater than or equal to 50 Mg/yr.

If an existing landfill makes an operational change (such as a change in compaction practices), this is not a "modification" (see the previous discussion on the definition of "modification"). Such a landfill will continue to be subject to the emission guidelines rather than becoming subject to the NSPS. The emission guidelines require the landfill to report any increase in design capacity that results in a capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup>. The control requirements of the emission guidelines will apply if the design capacity increases to over 2.5 million Mg and 2.5 million m<sup>3</sup> due to an operational change and not due to modification as defined by this rule.

The definition of "closed landfill" and wording in section 60.752(b) are being revised to delete references to section 258.60. This reference is not appropriate for all landfills because some landfills closed prior to the October 1993 effective date of part 258 and are not subject to part 258. Section 60.752(b)(2)(v)(A) is being revised for clarification to refer to the definition of "closed landfill" in section 60.751 instead of the requirements of section 258.60.

The definition of "interior well" is being revised to clarify that an interior well is located inside the perimeter of the landfilled waste.

The definition of "radii of influence" is being added parenthetically in section 60.759(a)(3)(ii) for clarification. This definition makes it clear that the radii of influence is the distance from the well center to a point in the landfill where the pressure gradient applied by

the blower or compressor approaches zero.

#### B. Designation of Affected Facility

Section 60.750(a) of subpart WWW is being revised slightly to clarify which landfills are subject to the NSPS. The promulgated rule stated that "the provisions of this subpart apply to each municipal solid waste landfill that commenced construction, reconstruction, or modification or began accepting waste on or after May 30, 1991. The words "or began accepting waste" have been deleted. This change makes the applicability consistent with both the definition of "new source" in section 111 of the Clean Air Act (CAA) and the applicability of the emission guidelines in section 60.32c of subpart Cc. As stated in section 60.32c(a), the emission guidelines apply to landfills that commenced construction, modification, or reconstruction before May 30, 1991. A landfill that commenced construction before May 30, 1991, but began accepting waste after May 1991 should be subject to the emission guidelines rather than the NSPS. The change being made accomplishes this objective and is consistent with the CAA. The definitions of "commenced" and "construction" are contained in section 60.2 of the NSPS General Provisions (subpart A). A definition for "modification" is being added to subpart WWW, and "reconstruction" is described in section 60.15 of the NSPS General Provisions.

Section 60.750(b) of subpart WWW is being revised to clarify that authority for test methods are retained by the Administrator and shall *not* be transferred to the State. This is consistent with EPA's historical position on test methods.

Under applicability, we are also clarifying that activities conducted as part of CERCLA remedial actions or RCRA corrective actions are not considered construction, modification, or reconstruction and would not make a landfill subject to the NSPS. This is consistent with the provisions that changes made to an existing landfill solely to comply with the emission guidelines do not make the landfill subject to the NSPS. It is also consistent with the exemption of facilities subject to a CERCLA remedial action from permitting requirements. This provision is being added to section 60.750 of subpart WWW as paragraph (c).

Regarding applicability and the design capacity exemption, the wording "or" in several places in section 60.752 has been changed to "and" to clarify that if a landfill design capacity is less

than either 2.5 million Mg or 2.5 million m<sup>3</sup>, the landfill is exempt from all provisions except the design capacity report; whereas if the capacity is equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup>, the additional requirements of the rule apply. As previously discussed under the definition of design capacity, a landfill may calculate design capacity on either a mass or volume basis to determine if it qualifies for the design capacity exemption.

#### C. Compliance Dates

The compliance time in section 60.752(b)(2)(ii) is being revised to make it clear that landfills have 30 months to install a collection and control system once the landfill becomes affected (i.e., the annual report shows NMOC emissions equal to or greater than 50 Mg/yr). Section 60.752(b)(2)(ii) stated that a landfill has 18 months to install a collection and control system after submitting a design plan to the Administrator. Section 60.752(b)(2)(i) requires landfills to submit a design plan within 1 year of the annual report showing NMOC emissions equal to or greater than 50 Mg/yr. Therefore, the previous language in the rule would require landfills that submitted a design plan earlier than 1 year after becoming affected to install a collection and control system sooner than landfills that waited the full 1 year to submit the design plan. The intent was to allow landfills 30 months after the first report showing NMOC emissions equal to or greater than 50 Mg/yr to install controls.

Similarly, in the emission guidelines, section 60.36c(a) is revised to specify that installation of collection and control systems shall be accomplished within 30 months of the initial report showing NMOC emissions equal or exceed 50 Mg/yr rather than within 30 months of the effective date of the State rule. This is consistent with the timing in the NSPS, which allows 90 days to submit an initial report, and 30 months to install controls if the report shows that emissions equal or exceed 50 Mg/yr.

Section 60.755(b) is being revised to clarify that an affected landfill must install each well no later than 60 days after the date on which the initial solid waste has been in place (1) for five years or more if the area is active or (2) two years or more if the area is closed or at final grade. The only change is to specify "no later than 60 days after" instead of "within 60 days."

#### D. Clarification of Title V Permitting Requirements

The paragraphs on part 70 permitting requirements are being revised to refer

to both part 70 and 71. In States with approved part 70 operating permit programs, sources will apply for part 70 permits; in States without approved part 70 permit programs, EPA will implement the federal operating permits program under part 71.

Section 502(a) of the Act requires title V operating permits for a number of sources, including, but not limited to, major sources and sources (including nonmajor sources) which are subject to standards or regulations under section 111 or 112. Section 502(a) also states that the Administrator may exempt source categories (in whole or in part) from permitting requirements if the Administrator determines that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, but not major sources.

At promulgation of this NSPS and EG (61 FR 9905, March 12, 1996), landfills with a design capacity less than 2.5 million Mg in mass or 2.5 million m<sup>3</sup> in volume were exempted from part 70 operating permit requirements based on the above provisions. Although these landfills are required to submit a design capacity report under this NSPS and EG, no control is required for landfills of this size. As a result, EPA believes that it would be unnecessarily burdensome for landfills, which are not major sources and which have design capacities less than 2.5 million Mg or 2.5 million m<sup>3</sup>, to apply for a title V permit when the NSPS or EG does not establish any emission limits or control requirements for such landfills.

If a MSW landfill is subject to title V permitting (40 CFR part 70 or part 71) as a result of this NSPS or EG standard (i.e., a source which meets or exceeds the design capacity of 2.5 million Mg and 2.5 million m<sup>3</sup>) it is not subject to the requirement to apply for a title V permit until 90 days after the earlier of the following dates: (1) the effective date of this NSPS (March 12, 1996); (2) the effective date of EPA's approval of a state's 111(d) plan; or (3) the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction on or after March 12, 1996, even if the design capacity report is submitted prior to the relevant deadline. Sentences have been added to section 60.752 and section 60.32c(c) to clarify the date the landfill becomes subject to title V. These dates for triggering title V applicability are consistent with the dates that NSPS sources are required to file design capacity reports. To maintain consistency between NSPS sources and EG sources, EG sources will not become

subject to the requirement to apply for a title V permit until 90 days after the effective date of EPA's approval of a state's 111(d) plan.

The permit provisions originally included as sentences within paragraphs (a) and (b) of section 60.752 have been moved to separate paragraphs (c) and (d) so that the detailed permit provisions are in one location. The wording has also been revised to clarify that landfills smaller than 2.5 million Mg or 2.5 million m<sup>3</sup> do not require a part 70 or 71 operating permit unless they are subject to part 70 or 71 for some other reason. A landfill of this size *could* be a major source, and, if so, would need to apply for a permit. This situation was discussed in the preamble to the promulgated rule (61 FR 9912, March 12, 1996). Also, a landfill of this size *could* be subject to title V for some other reason, e.g., subject to another NSPS or NESHAP.

Sources subject to the title V permitting program under parts 70 or 71 are required to file applications within 12 months after becoming subject to the program. Landfills which are subject to the title V permitting program as a result of being subject to this NSPS or EG are required to file title V applications within 12 months following the deadline to submit a design capacity report (which indicates that the landfill in question is equal to, or greater than, 2.5 million Mg and 2.5 million m<sup>3</sup>). In that the designation of size in the report triggers title V applicability, EPA believes that it is appropriate that the deadline for filing this report initiates the 12 month time frame for submitting a title V application. As provided in section 503(c) of the Act, permitting authorities may establish earlier deadlines, prior to the 12 month deadline, for submitting title V applications. If more than one requirement causes a source to be subject to title V permitting, the time frame for filing a title V application will be triggered by the requirement which first caused the source to be subject to title V.

Section 60.752(d) (formerly the last sentence in section 60.752(b)) is being revised. This paragraph stated that after a landfill is closed and either never required a control system or has met the criteria for control system removal, a title V permit is no longer needed. The phrase "if the landfill is not otherwise subject to the requirements of either part 70 or 71" has been added. As previously discussed, if a landfill is a major source or is subject to title V for some other reason (e.g., subject to another NSPS or NESHAP), it will still require a permit. Other format changes to this paragraph

are to improve clarity and do not change the intent.

Subpart Cc is being amended by adding paragraphs (c) and (d) to section 60.32c. These paragraphs, which cover when existing MSW landfills require part 70 or 71 operating permits, were excluded from the promulgated emission guidelines through an oversight. Part 70 permit provisions were included in the NSPS, but the Emission Guidelines inadvertently did not reference this section of the NSPS. The inclusion of these paragraphs makes subpart Cc consistent with subpart WWW with respect to part 70 or 71 operating permits. Specifically, paragraph (c) clarifies that an existing landfill smaller than 2.5 million Mg or 2.5 million m<sup>3</sup> does not require a part 70 or 71 operating permit unless it is subject to part 70 or 71 for some other reason. Paragraph (c) also clarifies that an existing landfill equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup> is subject to part 70 or 71 permitting requirements whether it is a major source or not. In addition, paragraph (d) clarifies that closed landfills that are only required to have title V permits due to 40 CFR part 60, subparts WWW or Cc and are not required to have a control system or meet the conditions for control system removal are not required to have part 70 or 71 operating permits, if they are not otherwise subject to title V permitting requirements. As with 40 CFR part 60, subpart WWW, under 40 CFR part 60, subpart Cc, the deadline for submitting a design capacity report initiates the time frame for submitting a title V application. Permitting authorities may, however, establish earlier dates by which applications are required from these title V sources.

#### E. Equations

Section 60.754(a)(1) is being revised to clarify that *both* the equation in section 60.754(a)(1)(i) and the equation in section 60.754(a)(1)(ii) may be used when the actual year-to-year solid waste acceptance rate is known for only part of the life of the landfill. This is the technically correct way to calculate emissions and was the intent of the rule.

Section 60.754(a)(1) is being amended by the addition of the methane generation rate constant (k) for geographical areas with low precipitation. A k value of 0.02 per year is provided for the tier 1 calculation for landfills located in geographical areas with a thirty year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorologic site. Landfills located in geographical areas with low

precipitation experience slower decomposition of their waste than landfills located in geographical areas with moderate to high rainfall. Consequently, the gas production rate at landfills located in drier areas is reduced. Rather than burden these landfills with pursuing tier 3 Method 2E testing and analysis for a site-specific k value, it is reasonable to allow an alternative default k value. In reviewing the information used to estimate the impacts of the final rule (Docket A-88-09, Item IV-M-4), a k value of 0.02 per year for landfills that meet this description is a reasonably conservative value consistent with the intent of the tier 1 analysis.

Sections 60.754(a)(1)(i) and (ii) are also being revised to clarify that only documentation of the nature and amount of nondegradable waste needs to be maintained when subtracting the mass of nondegradable waste from the total mass of waste when calculating the NMOC emission rate. The previous language specified that the documentation provisions of section 60.758(d)(2) were to be followed; however, these provisions are related to segregated areas within the landfill excluded from collection pursuant to section 60.759(a)(3)(i) or (ii) because asbestos or other nondegradable wastes were disposed in those areas or because the area is nonproductive. For the purposes of estimating emissions, only documentation of the nature and amount of nondegradable waste needs to be maintained to justify the subtraction of the mass of nondegradable waste.

#### F. Test Methods and Procedures

Section 60.754(a)(4)(ii) is revised to clarify that the site-specific methane generation rate constant is calculated only once and that this value is to be used in all subsequent annual NMOC emission rate calculations.

Section 60.752(b)(2)(iii)(B) is being revised to clarify that the initial performance test required under section 60.8 must be completed no later than 180 days after the initial startup of the approved control system. The promulgated regulation already required under section 60.757(f) that the initial performance test report must be submitted within 180 days of start-up of the collection system. This is being reiterated in section 60.752(b)(2)(iii)(B) for clarification.

Section 60.759(a)(3)(ii), which required the use of the values of k and CNMOC determined by field testing, if performed to determine the N<sub>MOC</sub> emission rate or radii of influence, is being revised to also refer to alternative

means for determining k or C<sub>NMOC</sub> allowed by section 60.754(a)(5). The reference to using L<sub>0</sub> values from testing is deleted because it was incorrect. The tier procedures do not include testing for L<sub>0</sub>. As previously mentioned, the definition of radii of influence is being added parenthetically for clarity.

#### G. Prevention of Significant Deterioration Determination

Section 60.754(c) is being revised to clarify that the intent of this provision was to establish the *method* by which prevention of significant deterioration determinations should be made, not to require a PSD determination. The original wording could have been misinterpreted to require PSD-related actions. PSD is a separate permit program that applies to new and modified sources. The PSD regulations, not this NSPS, establish whether a PSD determination is needed. New sources may be subject to PSD review.

In a July 1, 1994 guidance memorandum issued by the EPA (available on the Technology Transfer Network; see "Pollution Control Projects (PCP) and New Source Review (NSR) Applicability" from John S. Seitz, Director, OAQPS to EPA Regional Air Division Directors), the EPA provided guidance for permitting authorities on the approvability of PCP exclusions for source categories other than electric utilities. In the guidance, the EPA indicated that add-on controls and fuel switches to less polluting fuels meet the definition of a PCP and, provided certain safeguards are met, may qualify for an exclusion from major NSR. To be eligible to be excluded from otherwise applicable major NSR requirements, a PCP must, on balance, be "environmentally beneficial," and the permitting authority must ensure that the project will not cause or contribute to a violation of a national ambient air quality standard (NAAQS) or PSD increment, or adversely affect visibility or other air quality related value (AQRV).

A potential exclusion available under PSD is discussed here for informational purposes. In the July 1, 1994 guidance memorandum, the EPA specifically identified the installation of controls pursuant to the NSPS and EG rules as an example of add-on controls that could be considered a PCP and an appropriate candidate for a case-by-case exclusion from major NSR. The EPA considers installation of controls pursuant to the NSPS and EG rules for the control of landfill gases a PCP because the controls are installed to comply with the NSPS and will reduce emissions of NMOC. The EPA also

considers the reduction of these pollutants to represent an environmental benefit. However, EPA recognizes that the incidental formation of nitrogen oxides and carbon monoxide due to the destruction of landfill gas will occur. Consistent with the 1994 guidance, the permitting authority should confirm that in each case that the resultant increase in nitrogen oxides and carbon monoxide would not cause or contribute to a violation of the NAAQS and PSD increment or adversely affect an AQRV.

Finally, the 1994 guidance did not void or create an exclusion from any applicable minor source preconstruction review requirements in an approved State Implementation Plan (SIP). Any minor NSR permitting requirements in a SIP would continue to apply, regardless of any exclusion from major NSR that might be approved for a source under the PCP exclusion policy.

#### H. Monitoring

Section 60.756(a) is being revised to clarify that a temperature measuring device does not need to be permanently installed at each wellhead. It is common for wellheads to have an access port for temperature measurements so that a temperature measuring device can be shared across wellheads for the monthly temperature monitoring requirement. As long as the temperature is monitored monthly, the intent of the regulation is met.

Section 60.756(b)(2) is also being revised to clarify that the device for monitoring gas flow need only record the flow or bypass, not necessarily measure the rate at which gas is flowing to the control device.

#### I. Compliance Provisions

Section 60.755(a)(3) is being revised to allow an alternative timeline to be proposed for correcting an exceedance in collection header pressure at each well. Consistent with section 60.755(c)(4)(v), a sentence is being added to sections 60.755(a)(3) and 60.755(a)(5) to allow an alternate timeline to be proposed to the Administrator for correcting an exceedance. This revision makes the

sections consistent. Depending on the remedy selected to correct the problem, a different timeline may be needed, but any timeline extending more than 120 days must be approved by the regulatory agency.

Section 60.755(c)(1) is being revised slightly to indicate that surface monitoring of methane shall be performed along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30-meter intervals. This change makes the wording consistent with other sections of the rule (e.g., section 60.753(d)).

#### J. Recordkeeping and Reporting

Sections 60.757(a)(1) and (b)(1)(i) are being revised to clarify that subject landfills that commenced construction, modification, or reconstruction after May 30, 1991 (date of proposal) but before the date of promulgation had until June 10, 1996 (90 days from the promulgation date) to submit an initial design capacity report and an initial NMOC emission rate report to the Administrator. The previous language was not clear as to when landfills that commenced construction, modification, or reconstruction between proposal and promulgation would be required to submit an initial design capacity report or NMOC emission rate report. However, it is obvious that the reports could not be required prior to promulgation of the regulation. Therefore, instead of submitting the reports 90 days after commencing construction, landfills that were constructed before promulgation have 90 days after the promulgation date to submit the reports.

Also paragraphs (a)(1)(i) and (ii) in the promulgated rule were somewhat repetitive and contradictory. Paragraph (a)(1)(iii) reflected an unrealistic scenario in that this date would always occur later than the date in paragraphs (a)(1)(i) and (ii). For this reason, the previous paragraph (a)(1)(iii) was unnecessary and confusing. Therefore, that paragraph has been deleted, and paragraphs (a)(1)(i) and (ii) have been revised to state that the report is due on June 10, 1996 or within 90 days after the date of commencement of construction,

modification, or reconstruction, depending on when the construction, modification, or reconstruction commenced.

The wording of section 60.757(a)(2)(ii) is being revised to require calculation of design capacity submitted as part of the design capacity report to include "relevant parameters" rather than the specific list of parameters in the promulgated rule. Some of the previously listed parameters (e.g., compaction practices) would not apply to landfills that calculate design capacity on a volumetric rather than mass basis. Other parameters that were not listed will be needed to perform the calculation in some cases.

The wording of section 60.757(a)(3), which requires amended design capacity reports, is being revised for clarity and consistency with the definitions of modification and design capacity discussed under I.A. It also clarifies that a report is required only if capacity increases above 2.5 million Mg and 2.5 million m<sup>3</sup>. This was the original intent, but the original wording was confusing.

Several paragraphs in section 60.758 are being revised to clarify that the recordkeeping requirements in paragraphs (b), (c), (d), and (e) do not apply if an alternative to the operational standards, test methods, procedures, compliance measures, monitoring, or reporting provisions has been submitted with the design plan and approved by the Administrator.

#### II. Cross-Referencing and Typographical Errors

Errors in cross-referencing one section to another within subpart WWW are being corrected. Typographical errors are also being corrected.

#### III. Corrections to Promulgation Preamble

Tables 3 and 5 in the promulgation preamble contained typographical errors. The units for the small size cutoff (column 1) are stated to be in millions of megagrams (millions Mg); however, the values presented are actually in megagrams. These tables are corrected and provided below for clarification.

TABLE 3.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE EMISSION GUIDELINES <sup>a b</sup>

Small size cutoff (mg)	Number landfills affected	Annual <sup>c</sup> NMOC emission reduction (Mg/yr)	Annual <sup>d</sup> methane emission reduction (Mg/yr)	Annual cost (million \$/yr)	NMOC average cost eff. (\$/Mg)	NMOC incremental cost eff. (\$/Mg)
Baseline <sup>e</sup> .....						
3,000,000 .....	273	73,356	3,220,000	84	1,145	1,145
2,500,000 .....	312	77,600	3,370,000	89	1,147	1,178
1,000,000 .....	572	97,600	3,990,000	119	1,219	1,500

TABLE 3.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE EMISSION GUIDELINES <sup>a b</sup>—Continued

Small size cutoff (mg)	Number landfills affected	Annual <sup>c</sup> NMOC emission reduction (Mg/yr)	Annual <sup>d</sup> methane emission reduction (Mg/yr)	Annual cost (million \$/yr)	NMOC average cost eff. (\$/Mg)	NMOC incremental cost eff. (\$/Mg)
No cutoff <sup>f</sup> .....	7,299	142,000	8,270,000	719	5,063	13,514

<sup>a</sup> Emission rate cutoff level of 50 Mg NMOC/yr.  
<sup>b</sup> All values are fifth year annualized.  
<sup>c</sup> NMOC emission reductions are from a baseline of 145,000 Mg NMOC/yr.  
<sup>d</sup> Methane emission reductions are from a baseline of 8,400,000 Mg methane/yr.  
<sup>e</sup> In the absence of an emission guidelines.  
<sup>f</sup> No emission rate cutoff and no design capacity exemption level.

TABLE 5.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE NEW SOURCE PERFORMANCE STANDARDS <sup>a b</sup>

Small size cutoff (mg)	Number landfills affected	Annual <sup>c</sup> NMOC emission reduction (Mg/yr)	Annual <sup>d</sup> methane emission reduction (Mg/yr)	Annual <sup>e</sup> cost (million \$/yr)	NMOC average cost eff. (\$/Mg)	NMOC <sup>f</sup> incremental cost eff. (\$/Mg)
Baseline <sup>g</sup> .....						
3,000,000 .....	41	4,900	193,000	4	816	NA
2,500,000 .....	43	4,900	193,000	4	816	NA
1,000,000 .....	89	4,900	193,000	4	816	NA
No cutoff <sup>h</sup> .....	872	13,115	881,000	81	6,176	NA

<sup>a</sup> Emission rate cutoff level of 50 Mg NMOC/yr.  
<sup>b</sup> All values are fifth year annualized.  
<sup>c</sup> NMOC emission reductions are from a baseline of 13,400 Mg NMOC/yr.  
<sup>d</sup> Methane emission reductions are from a baseline of 899,000 Mg methane/yr.  
<sup>e</sup> Due to rounding off to the nearest million dollar, cost values do not appear to change for each option. However, actual costs are slightly less for a less stringent option.  
<sup>f</sup> Because the annual cost does not change enough to show a different cost from one option to the next, incremental cost effectiveness values are not applicable.  
<sup>g</sup> In the absence of a standard.  
<sup>h</sup> No emission rate cutoff and no design capacity exemption level.

**IV. Judicial Review**

Under section 307(b)(1) of the CAA, judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's document may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**V. Administrative**

**A. Paperwork Reduction Act**

The information collection requirements of the previously promulgated NSPS were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1557.03) may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460 or by calling (202) 260-2740.

Today's changes to the NSPS should have no impact on the information collection burden estimates made previously. The changes consist of new definitions and clarifications of requirements; not additional requirements. Consequently, the ICR has not been revised.

**B. Executive Order 12866 Review**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not "significant" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

**C. Regulatory Flexibility**

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this direct final rule amendment will not have a significant economic impact on a substantial number of small entities. Today's action clarifies the applicability of control requirements in the Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills and does not include any

provisions that create a burden for any of the regulated entities.

The changes in today's action do not increase the stringency of the rule or add additional control requirements. Nor is the scope of the rule changed so as to bring any entities not previously subject to the rule within its scope or coverage. Today's action does not alter control, monitoring, recordkeeping, or reporting requirements of the promulgated rule.

#### D. Submission to Congress

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

#### E. Executive Order 12875 and Unfunded Mandates Reform Act

Under the executive order EPA must consult with representatives of affected State, local, and Tribal governments. Under the unfunded mandates reform act, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or Tribal governments, or to the private sector, will be \$100 million or more per year. The EPA held consultations and prepared such a statement at the time of promulgation of subpart Cc and WWW (61 FR 9913, March 12, 1996). Today's changes consist of new definitions and clarifications and do not impose costs on government entities or the private sector. Consequently, a new unfunded mandates statement has not been prepared.

#### F. Children's Health Protection

This direct final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety that may disproportionately affect children.

#### List of Subjects in 40 CFR Part 60

Environmental protection, Municipal solid waste landfills, Air pollution control.

Dated: May 28, 1998.

Carol M. Browner,  
Administrator.

For the reasons set out in the preamble, title 40, chapter 1, part 60 of the Code of Federal Regulations is amended as follows:

#### PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

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

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

#### Subpart Cc—[Amended]

2. Amend § 60.32c by adding paragraphs (c) and (d) to read as follows:

#### § 60.32c Designated facilities.

(c) For purposes of obtaining an operating permit under title V of the Act, the owner or operator of a MSW landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of a MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on the effective date of EPA approval of the State's program under section 111(d) of the Act, and not otherwise subject to either part 70 or 71, becomes subject to the requirements of §§ 70.5(a)(1)(i) or 71.5(a)(1)(i) of this chapter 90 days after the effective date of such 111(d) program approval, even if the design capacity report is submitted earlier.

(d) When a MSW landfill subject to this subpart is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the requirements of either part 70 or 71 and if either of the following conditions are met.

(1) The landfill was never subject to the requirement for a control system under § 60.33c(c) of this subpart; or

(2) The owner or operator meets the conditions for control system removal specified in § 60.752(b)(2)(v) of subpart WWW.

3. Amend § 60.33c by removing in paragraph (a)(2) the phrase "2.5 million

megagrams or 2.5 million cubic meters" and adding, in its place "2.5 million megagrams and 2.5 million cubic meters."

4. Amend § 60.36c by revising paragraph (a) to read as follows:

#### § 60.36c Compliance times.

(a) Except as provided for under paragraph (b) of this section, planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under § 60.33c shall be accomplished within 30 months after the date the initial NMOC emission rate report shows NMOC emissions equal or exceed 50 megagrams per year.

\* \* \* \* \*

#### Subpart WWW

5. Amend § 60.750 as follows:

a. In paragraph (a), remove the words "or began accepting waste".

b. In paragraph (b), remove the word "None" and add, in its place "§ 60.754(a)(5)".

c. Add paragraph (c) to read as follows:

#### § 60.750 Applicability, designation of affected facility, and delegation of authority.

\* \* \* \* \*

(c) Activities required by or conducted pursuant to a CERCLA, RCRA, or State remedial action are not considered construction, reconstruction, or modification for purposes of this subpart.

6. Amend § 60.751 as follows:

a. Remove the last sentence in the definition of "closed landfill."

b. Revise the definitions of "controlled landfill," "design capacity," and "interior well" and add a definition of "modification" to read as follows:

#### § 60.751 Definitions.

\* \* \* \* \*

*Controlled landfill* means any landfill at which collection and control systems are required under this subpart as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with § 60.752(b)(2)(i).

*Design capacity* means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the State, local, or Tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to

mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site specific density, which must be recalculated annually.

\* \* \* \* \*

*Interior well* means any well or similar collection component located inside the perimeter of the landfill waste. A perimeter well located outside the landfilled waste is not an interior well.

\* \* \* \* \*

*Modification* means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991.

7. Amend § 60.752 by revising paragraph (a), the introductory text of paragraph (b), paragraphs (b)(2)(ii), (b)(2)(iii)(B), and (b)(2)(v)(A), and adding paragraphs (c) and (d) to read as follows:

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

(a) Each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume shall submit an initial design capacity report to the Administrator as provided in § 60.757(a). The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. Submittal of the initial design capacity report shall fulfill the requirements of this subpart except as provided for in paragraphs (a)(1) and (a)(2) of this section.

(1) The owner or operator shall submit to the Administrator an amended design capacity report, as provided for in § 60.757(a)(3).

(2) When an increase in the maximum design capacity of a landfill exempted from the provisions of § 60.752(b) through § 60.759 of this subpart on the basis of the design capacity exemption in paragraph (a) of this section results in a revised maximum design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the owner or operator shall comply with the provision of paragraph (b) of this section.

(b) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, shall either comply with paragraph (b)(2) of this section or calculate an NMOC emission rate for the landfill using the procedures specified in § 60.754. The

NMOC emission rate shall be recalculated annually, except as provided in § 60.757(b)(1)(ii) of this subpart. The owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters is subject to part 70 or 71 permitting requirements.

(1) \* \* \*

(2) \* \* \*

(ii) Install a collection and control system that captures the gas generated within the landfill as required by paragraphs (b)(2)(ii)(A) or (B) and (b)(2)(iii) of this section within 30 months after the first annual report in which the emission rate equals or exceeds 50 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the emission rate is less than 50 megagrams per year, as specified in § 60.757(c)(1) or (2).

\* \* \* \* \*

(iii) \* \* \*

(A) \* \* \*

(B) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen. The reduction efficiency or parts per million by volume shall be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in § 60.754(d).

\* \* \* \* \*

(v) \* \* \*

(A) The landfill shall be a closed landfill as defined in § 60.751 of this subpart. A closure report shall be submitted to the Administrator as provided in § 60.757(d);

\* \* \* \* \*

(c) For purposes of obtaining an operating permit under title V of the Act, the owner or operator of a MSW landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of a MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic

meters, and not otherwise subject to either part 70 or 71, becomes subject to the requirements of §§ 70.5(a)(1)(i) or 71.5(a)(1)(i) of this chapter, regardless of when the design capacity report is actually submitted, no later than:

(1) June 10, 1996 for MSW landfills that commenced construction, modification, or reconstruction on or after May 30, 1991 but before March 12, 1996;

(2) Ninety days after the date of commenced construction, modification, or reconstruction for MSW landfills that commence construction, modification, or reconstruction on or after March 12, 1996.

(d) When a MSW landfill subject to this subpart is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the requirements of either part 70 or 71 and if either of the following conditions are met:

(1) The landfill was never subject to the requirement for a control system under paragraph (b)(2) of this section;

(2) The owner or operator meets the conditions for control system removal specified in paragraph (b)(2)(v) of this section.

8. Amend § 60.753 by revising the introductory text of § 60.753 and the second sentence of paragraph (d) and the first sentence of paragraph (g) to read as follows:

**§ 60.753 Operational standards for collection and control systems.**

Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.752(b)(2)(ii) of this subpart shall: \* \* \*

(d) \* \* \* To determine if this level is exceeded, the owner or operator shall conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover. \* \* \*

\* \* \* \* \*

(g) If monitoring demonstrates that the operational requirements in paragraphs (b), (c), or (d) of this section are not met, corrective action shall be taken as specified in § 60.755(a)(3) through (5) or § 60.755(c) of this subpart. \* \* \*

9. Amend § 60.754 as follows:

a. In the last sentences of paragraph (a)(1)(i) and (a)(1)(ii) remove the phrase "if the documentation provisions of § 60.758(d)(2) are followed" and add, in

its place, "if documentation of the nature and amount of such wastes is maintained";

b. In paragraph (a)(4)(ii) remove the last sentence and add in its place, "The calculation of the methane generation rate constant is performed only once, and the value obtained from this test shall be used in all subsequent annual NMOC emission rate calculations.";

c. In paragraphs (a)(5) and (b)(3) remove the phrase "as provided in § 60.752(b)(2)(i)(B)";

d. In paragraph (d), remove the words "Method 25" and add, in its place "Method 25C";

e. Revise the introductory text of paragraph (a)(1) and revise paragraph (c) to read as follows:

**§ 60.754 Test methods and procedures.**

(a)(1) The landfill owner or operator shall calculate the NMOC emission rate using either the equation provided in paragraph (a)(1)(i) of this section or the equation provided in paragraph (a)(1)(ii) of this section. Both equations may be used if the actual year-to-year solid waste acceptance rate is known, as specified in paragraph (a)(1)(i), for part of the life of the landfill and the actual year-to-year solid waste acceptance rate is unknown, as specified in paragraph (a)(1)(ii), for part of the life of the landfill. The values to be used in both equations are 0.05 per year for k, 170 cubic meters per megagram for  $L_0$ , and 4,000 parts per million by volume as hexane for the  $C_{NMOC}$ . For landfills located in geographical areas with a thirty year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorologic site, the k value to be used is 0.02 per year.

\* \* \* \* \*

(c) When calculating emissions for PSD purposes, the owner or operator of each MSW landfill subject to the provisions of this subpart shall estimate the NMOC emission rate for comparison to the PSD major source and significance levels in §§ 51.166 or 52.21 of this chapter using AP-42 or other approved measurement procedures.

\* \* \* \* \*

10. Amend § 60.755 as follows:

a. In paragraphs (a)(3) and (a)(5), add a sentence at the end of each paragraph reading "An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval.";

b. Revise paragraph (a)(4) to read as follows:

**§ 60.755 Compliance provisions.**

(a) \* \* \*

(4) Owners or operators are not required to expand the system as required in paragraph (a)(3) of this section during the first 180 days after gas collection system startup.

\* \* \* \* \*

c. In paragraph (b) introductory text, in the last sentence, remove the phrase "within 60 days of the date in which" and add in its place, "no later than 60 days after the date on which";

d. In paragraph (c)(1), delete the phrase "and along a serpentine pattern spaced 30 meters apart (or a site-specific established spacing)" and add in its place, "and along a pattern that traverses the landfill at 30 meter intervals (or a site-specific established spacing)".

11. Amend § 60.756 as follows:

a. In paragraph (a) introductory text, remove the phrase "or other temperature measuring device" and add, in its place, "other temperature measuring device, or an access port for temperature measurements";

b. In paragraph (b)(1), remove the phrase "an accuracy of" and add in its place, "a minimum accuracy of";

c. In paragraph (b)(2), introductory text, remove the phrase "A gas flow rate measuring device that provides a measurement of gas flow" and add, in its place, "A device that records flow";

12. Amend § 60.757 by revising paragraphs (a)(1), (a)(2), (a)(3), (b)(1)(i) and (g) introductory text to read as follows:

**§ 60.757 Reporting requirements.**

\* \* \* \* \*

(a) \* \* \*

(1) The initial design capacity report shall fulfill the requirements of the notification of the date construction is commenced as required by § 60.7(a)(1) and shall be submitted no later than:

(i) June 10, 1996, for landfills that commenced construction, modification, or reconstruction on or after May 30, 1991 but before March 12, 1996 or

(ii) Ninety days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction on or after March 12, 1996.

(2) The initial design capacity report shall contain the following information:

(i) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the permit issued by the State, local, or tribal agency responsible for regulating the landfill.

(ii) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the permit

issued by the State, local, or tribal agency responsible for regulating the landfill, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity shall be calculated using good engineering practices. The calculations shall be provided, along with the relevant parameters as part of the report. The State, Tribal, local agency or Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(3) An amended design capacity report shall be submitted to the Administrator providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to or above 2.5 million megagrams and 2.5 million cubic meters. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in § 60.758(f).

(b) \* \* \*

(1) \* \* \*

(i) The initial NMOC emission rate report may be combined with the initial design capacity report required in paragraph (a) of this section and shall be submitted no later than indicated in paragraphs (b)(1)(i)(A) and (B) of this section. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for in paragraphs (b)(1)(ii) and (b)(3) of this section.

(A) June 10, 1996, for landfills that commenced construction, modification, or reconstruction on or after May 30, 1991, but before March 12, 1996, or

(B) Ninety days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction on or after March 12, 1996.

\* \* \* \* \*

(g) Each owner or operator seeking to comply with § 60.752(b)(2)(iii) shall include the following information with the initial performance test report required under § 60.8:

\* \* \* \* \*

13. Amend § 60.758 as follows:

a. Remove the introductory text;

b. At the beginning of paragraphs (a), (b) introductory text, (c) introductory text, (d) introductory text, and (e), add the phrase "Except as provided in § 60.752(b)(2)(i)(B),";

c. In paragraph (a), remove the phrase "on-site records of the maximum design capacity" and add, in its place "on-site records of the design capacity report which triggered § 60.752(b)";

d. Add paragraph (f) to read as follows:

**§ 60.758 Recordkeeping Requirements.**

\* \* \* \* \*

(f) Landfill owners or operators who convert design capacity from volume to mass or mass to volume to demonstrate that landfill design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, as provided in the definition of "design capacity", shall keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity, and the supporting documentation. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

14. Amend § 60.759 as follows:

a. In paragraph (a)(3)(iii), remove the sentence "The values for k, L<sub>0</sub>, and C<sub>NMOC</sub> determined in field testing shall be used, if field testing has been performed in determining the NMOC emission rate or the radii of influence." and add, in its place, the sentence "The values for k and C<sub>NMOC</sub> determined in field testing shall be used, if field testing has been performed in determining the NMOC emission rate or the radii of influence (the distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero)."

b. In paragraph (a)(3)(iii), remove the sentence "If field testing has not been performed, the default values for k, L<sub>0</sub>, and C<sub>NMOC</sub> provided in § 60.754(a)(1) shall be used" and add, in its place, the sentence "If field testing has not been performed, the default values for k, L<sub>0</sub> and C<sub>NMOC</sub> provided in § 60.754(a)(1) or the alternative values from § 60.754(a)(5) shall be used.

[FR Doc. 98-15007 Filed 6-15-98; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 180, 185 and 186**

[OPP-300663; FRL-5793-5]

RIN 2070-AB78

**Quizalofop-p ethyl ester; Pesticide Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of quizalofop-p ethyl ester [ethyl (R)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]propanoate), and its acid metabolite quizalofop-p [(R)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]propionate) and the S enantiomers of the ester and the acid, all expressed as quizalofop-p ethyl ester in or on canola seed, canola meal, peppermint tops and spearmint tops. DuPont Agricultural Products requested the tolerances for canola and the Interregional Research Project Number 4 (IR-4) requested the tolerances for peppermint and spearmint. These tolerances were requested under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170).

**DATES:** This regulation is effective June 16, 1998. Objections and requests for hearings must be received by EPA on or before August 17, 1998.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP-300663], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300663], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300663]. No Confidential Business

Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-7610; e-mail: jackson.sidney@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the Federal Register published on October 29, 1997 (62 FR 56176 (mint)) (FRL-5749-7) and December 17, 1997, 62 FR 66080 (canola) (FRL-5758-3), EPA, issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP) 6E4652 and 5F4545 for tolerances by the IR-4 and DuPont Agricultural Products, Wilmington, Delaware. These notices included a summary of the petitions prepared by DuPont Agricultural Products, Wilmington, Delaware, the registrant. There were no comments received in response to these notices of filing.

The petitions requested that 40 CFR 180.441 be amended by establishing tolerances for combined residues of the herbicide quizalofop-p ethyl ester [ethyl (R)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]propanoate), and its acid metabolite quizalofop-p [(R)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]propionate) and the S enantiomers of the ester and the acid, all expressed as quizalofop-p ethyl ester, in or on canola seed at 1.0 part per million (ppm), canola meal at 1.5 ppm, and peppermint tops and spearmint tops at 2.0 ppm. .

**I. Risk Assessment and Statutory Findings**

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and

**Federal Register**

---

Wednesday  
February 24, 1999

---

**Part IV**

**Environmental  
Protection Agency**

---

**40 CFR Part 60**

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

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

[AD-FRL-6231-8]

**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 amendments and corrections.

**SUMMARY:** The EPA is amending the CFR to correct errors made in the direct final rule, "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills," published in the **Federal Register** on June 16, 1998. The direct final rule amended, corrected errors, and clarified regulatory text of the final rule, which was published on March 12, 1996 (63 FR 32743). Today's action further clarifies the regulatory text and corrects errors. Industry sectors likely to be affected include Air and Water Resource and Solid Waste Management, and Refuse Systems—Solid Waste Landfills (North American Industrial Classification System codes 92411 and 562212).

**DATES:** These amendments are effective February 24, 1999.

**ADDRESSEES:** Air Docket. Docket A-88-09 contains the supporting information for the original New Source Performance Standards (NSPS) and Emission Guidelines (EG), the direct final rule, and this action and is available for public inspection and copying between 8 a.m and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and

Information Center (MC-6102), 401 M Street SW, Washington, DC 20460, or by calling (202) 260-7548. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor). 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. For implementation issues, contact Mary Ann Warner, Program Review Group, Information Transfer and Program Integration Group (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-1192. For information on the Landfill model, contact Susan Thorneloe through the Internet at [thorneloe.susan@epa.gov](mailto:thorneloe.susan@epa.gov). For information concerning applicability and rule determinations, contact the appropriate regional representative:

- Region I:  
Greg Roscoe, Air Programs Compliance Branch Chief, U.S. EPA/ASO, Region I, JFK Federal Building, Boston, MA 02203, (617) 565-3221
- Region II:  
Christine DeRosa, U.S. EPA, Region II, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-4022
- Region III:  
James Topsale, U.S. EPA/3AP22, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-2190
- Region IV:  
R. Douglas Neeley, Chief, Air and Radiation Technology Branch, U.S. EPA, Region IV, 61 Forsyth St., SW, Atlanta, GA 30303, (404) 562-9105
- Region V:  
George T. Czerniak, Jr., Air

- Enforcement Branch Chief, U.S. EPA/5AE-26, Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 353-2088
- Region VI:  
John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2733, (214) 655-7220
- Region VII:  
Ward Burns, U.S. EPA/RME, Region VII, 726 Minnesota Avenue/ARTDAPCO, Kansas City, KS 66101-2728, (913) 551-7960
- Region VIII:  
Vicki Stamper, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2466, (303) 312-6445
- Region IX:  
Patricia Bowlin, U.S. EPA/RM HAN/17211, Region IX, 75 Hawthorne Street/AIR-4, San Francisco, CA, (415) 744-1188
- Region X:  
Catherine Woo, U.S. EPA, Region X, Office of Air Quality Planning, and Standards-107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553-1814

**Technology Transfer Network Web**

The EPA Technology Transfer Network Web (TTN Web) is a collection of technical websites containing information about many areas of air pollution science, technology, and regulation. The TTN Web provides information and technology exchange for the public and EPA staff in various areas of air pollution control. New air regulations are posted on the TTN Web through the world wide web at "<http://www.epa.gov/ttn>." For more information on the TTN Web, call the HELP line at (919) 541-5384.

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities**

The entities potentially affected by this action include:

Category	Examples of regulated entities
Industry and Local Government Agencies, NAICS codes 92411 (Air and Water Resource and Solid Waste Management) and 562212 (Refuse Systems—Solid Waste Landfills).	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 interested in the amendments and corrections to the regulation affected by this action. While the landfills NSPS and emission guidelines (40 CFR part 60, subparts Cc and WWW) will primarily impact facilities in North American Industrial Classification

System (NAICS) codes 92411 and 562212, or in the old Standard Industrial Classification (SIC) code 4953, not all facilities in these codes will be affected. To determine if your landfill is affected by the landfill NSPS or emission guidelines, see 40 CFR part 60, subparts Cc and WWW, or the technical amendments published on June 16, 1998 (63 FR 32743).

**Background**

On March 12, 1996 (61 FR 9919), the EPA promulgated in the **Federal Register** standards of performance for new sources (NSPS) for municipal solid waste landfills and emission guidelines for existing municipal solid waste landfills. These regulations and guidelines were promulgated as

subparts WWW and Cc of 40 CFR part 60.

This notice clarifies a definition and the reporting requirements of the emission guidelines and corrects typographical errors which appeared in the direct final notice published on June 16, 1998 (63 FR 32743).

**I. Description of Changes**

**A. Definitions**

The NSPS applies to landfills that commence construction, modification, or reconstruction on or after May 30, 1991 (the proposal date for this NSPS and EG). A definition of modification was added in the direct final rule: modification means an increase in permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. The definition is specific to landfills but is not consistent with the intent of 40 CFR 60.14 of the part 60 general provisions. (See 63 FR 32743.) In this notice, EPA is amending the definition of modification by adding a sentence to clarify that modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion. This is consistent with the part 60 general provisions and the definition of new source in section 111(a)(2) of the Clean Air Act (Act), as

well as § 60.750(a) of subpart WWW (the NSPS).

**B. Reporting**

The EPA is clarifying when the design capacity and NMOC emission rate reports must be submitted for existing facilities. Section 60.35c of the promulgated emission guidelines requires the same reporting and recordkeeping as §§ 60.757 and 60.758 of the NSPS. Sections 60.33c(a)(2) of the emission guidelines also refers to design capacity reports. However, these sections do not address when the reports are due for existing sources. Section 60.758 specifies that for new sources, a design capacity report and initial NMOC emission rate report (if required) are due 90 days after promulgation of the NSPS or 90 days after a source commences construction, modification, or reconstruction. To be consistent with these dates and with the date that existing sources become subject to Title V permitting requirements, as specified in § 60.32c(c), and the dates provided in the EPA guidance document for State plans (EPA-456R/96-005), EPA is clarifying that for existing sources, the initial design capacity report is due 90 days after the effective date of EPA's approval of a State plan. For sources with design capacities greater than or equal to 2.5

million Mg and 2.5 million cubic meters, the initial NMOC emission rate report is due at the same time. To accomplish these clarifications, paragraphs (d) and (e) have been added to § 60.33c to describe the design capacity and emission rate reporting requirements applicable to existing sources, and paragraphs (a) and (b) have been added to § 60.35c to specify the dates these reports are due.

**II. Typographical Errors**

Tables 3 and 5 in the direct final preamble (63 FR 32748-32749) contained typographical errors. The units for the small size cutoff (column 1) are stated to be in milligrams (mg); however, the values presented are actually in megagrams (Mg). In table 5, the final two columns show the "NMOC average cost eff." and the "NMOC incremental cost eff." These two columns should read "NMOC" for nonmethane organic compounds, rather than "MNOC". These tables are corrected and provided below for clarification.

A typographical error in the final rule amendment text (63 FR 32753) is also being corrected. In the amendments to § 60.759(a)(3)(iii), the term "C<sub>NMOC</sub>" is corrected to read "C<sub>NMOC</sub>," meaning the concentration of nonmethane organic compounds.

TABLE 3.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE EMISSION GUIDELINES<sup>a,b</sup>

Small size cutoff (Mg)	Number landfills affected	Annual NMOC emission reduction <sup>c</sup> (Mg/yr)	Annual methane emission reduction <sup>d</sup> (Mg/yr)	Annual cost (million \$/yr)	NMOC average cost eff. (\$/Mg)	NMOC incremental cost eff. (\$/Mg)
Baseline <sup>e</sup>						
3,000,000	273	73,356	3,220,000	84	1,145	1,145
2,500,000	312	77,600	3,370,000	89	1,147	1,178
1,000,000	572	97,600	3,990,000	119	1,219	1,500
No cutoff <sup>f</sup>	7,299	142,000	8,270,000	719	5,063	13,514

<sup>a</sup> Emission rate cutoff level of 50 Mg NMOC/yr.  
<sup>b</sup> All values are fifth year annualized.  
<sup>c</sup> NMOC emission reductions are from a baseline of 145,000 Mg NMOC/yr.  
<sup>d</sup> Methane emission reductions are from a baseline of 8,400,000 Mg methane/yr.  
<sup>e</sup> In the absence of an emission guideline.  
<sup>f</sup> No emission rate cutoff and no design capacity exemption level.

TABLE 5.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE NEW SOURCE PERFORMANCE STANDARDS<sup>a, b</sup>

Small size cutoff (Mg)	Number landfills affected	Annual NMOC emission reduction <sup>c</sup> (Mg/yr)	Annual methane emission reduction <sup>d</sup> (Mg/yr)	Annual cost <sup>e</sup> (million \$/yr)	NMOC average cost eff. (\$/Mg)	NMOC incremental cost eff. <sup>f</sup> (\$/Mg)
Baseline <sup>e</sup>						
3,000,000	41	4,900	193,000	4	816	NA
2,500,000	43	4,900	193,000	4	816	NA
1,000,000	89	4,900	193,000	4	816	NA
No cutoff <sup>h</sup>	872	13,115	881,000	81	6,176	NA

<sup>a</sup> Emission rate cutoff level of 50 Mg NMOC/yr.

<sup>b</sup> All values are fifth year annualized.

<sup>c</sup> NMOC emission reductions are from a baseline of 13,400 Mg NMOC/yr.

<sup>d</sup> Methane emission reductions are from a baseline of 899,000 Mg methane/yr.

<sup>e</sup> Due to rounding off to the nearest million dollar, cost values do not appear to change for each option. However, actual costs are slightly less for a less stringent option.

<sup>f</sup> Because the annual cost does not change enough to show a different cost from one option to the next, incremental cost effectiveness values are not applicable.

<sup>g</sup> In the absence of a standard.

### III. Administrative

#### A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NSPS were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1557.03) may be obtained from Sandy Farmer, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460 or by calling (202) 260-2740.

Today's clarifications to the NSPS should have no impact on the information collection burden estimates made previously. This document clarifies the reporting requirements without adding new requirements. Consequently, the ICR has not been revised.

#### B. Executive Order 12866: A Significant Regulatory Action Determination

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the proposed regulatory action is "significant," and therefore, subject to OMB review and the requirements of this Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, public health or safety in State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not "significant" because none of the listed criteria apply to this action. Therefore, today's notice did not require OMB review.

#### C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Today's action is not subject to notice and comment rulemaking requirements and therefore is not subject to the Regulatory Flexibility Act. However, for the reasons discussed in the March 12, 1996 *Federal Register* (60 FR 9918), this rule does not have a significant impact on a substantial number of small entities. Today's action clarifies the reporting requirements in the Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills and does not include any provisions that create a burden for any of the regulated entities.

The clarifications in today's action do not increase the stringency of the rule or add additional control requirements. Nor is the scope of the rule changed so as to bring any entities not previously subject to the rule within its scope or coverage. Today's action does not alter control, monitoring, recordkeeping, or reporting requirements of the promulgated rule.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of

regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to today's action.

#### E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide the Office of Management and Budget (OMB) a description of the extent of the EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written

communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

The EPA held consultations and prepared such a statement at the time of promulgation of subpart Cc and WWW (60 FR 9913, March 12, 1996). Today's action consists of clarifications that do not create a mandate on State, local, or tribal governments. Therefore, the requirements of Executive Order 12875 do not apply to today's action.

#### *F. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

Executive Order 13045 applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

Today's action is not subject to Executive Order 13045 because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

#### *G. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to

issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This action does not significantly or uniquely affect communities of Indian tribal governments. The EPA has determined that this final rule does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1996 emission guidelines and NSPS. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### *H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

Today's action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, consideration of voluntary consensus standards is not relevant to this action.

#### *I. Immediate Effective Date*

The EPA is making today's action effective immediately. The EPA has determined that the rule changes being made in today's action are not subject to notice and comment requirements. In addition, the rule change is a type of technical correction, since it clarifies the rule to be consistent with EPA's

intentions stated in the rule's preamble and other documents. Notice and opportunity for comment is not required for such technical corrections. The EPA has also determined that this rule may be made effective in less than 30 days because it is interpretive, and relieves restrictions. See 5 U.S.C. 553(d) (1) and (2).

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

#### **List of Subjects in 40 CFR Part 60**

Environmental protection, Air pollution control, Municipal solid waste landfills.

Dated: January 25, 1999.

**Robert Perciasepe,**  
*Assistant Administrator, OAR.*

Part 62, Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

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 Cc—[Amended]**

2. Amend § 60.33c as follows:

a. In paragraph (a)(2), remove the words "submitted with the report" and add, in its place, "submitted with the design capacity report".

b. Add paragraphs (d) and (e) to read as follows:

#### **§ 60.33c Emission guidelines for municipal solid waste landfill emissions.**

\* \* \* \* \*

(d) For approval, a State plan shall require each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by

volume to submit an initial design capacity report to the Administrator as provided in § 60.757(a)(2) of subpart WWW by the date specified in § 60.35c of this subpart. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. Submittal of the initial design capacity report shall fulfill the requirements of this subpart except as provided in paragraph (d)(1) and (d)(2) of this section.

(1) The owner or operator shall submit an amended design capacity report as provided in § 60.757(a)(3) of subpart WWW. [Guidance: Note that if the design capacity increase is the result of a modification, as defined in § 60.751 of subpart WWW, that was commenced on or after May 30, 1991, the landfill will become subject to subpart WWW instead of this subpart. If the design capacity increase is the result of a change in operating practices, density, or some other change that is not a modification, the landfill remains subject to this subpart.]

(2) When an increase in the maximum design capacity of a landfill with an initial design capacity less than 2.5 million megagrams or 2.5 million cubic meters results in a revised maximum design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the owner or operator shall comply with paragraph (e) of this section.

(e) For approval, a State plan shall require each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters to either install a collection and control system as provided in paragraph (b) of

this section and § 60.752(b)(2) of subpart WWW or calculate an initial NMOC emission rate for the landfill using the procedures specified in § 60.34c of this subpart and § 60.754 of subpart WWW. The NMOC emission rate shall be recalculated annually, except as provided in § 60.757(b)(1)(ii) of subpart WWW.

(1) If the calculated NMOC emission rate is less than 50 megagrams per year, the owner or operator shall:

(i) submit an annual emission report, except as provided for in § 60.757(b)(1)(ii); and

(ii) recalculate the NMOC emission rate annually using the procedures specified in § 60.754(a)(1) of subpart WWW until such time as the calculated NMOC emission rate is equal to or greater than 50 megagrams per year, or the landfill is closed.

(2)(i) If the NMOC emission rate, upon initial calculation or annual recalculation required in paragraph (e)(1)(ii) of this section, is equal to or greater than 50 megagrams per year, the owner or operator shall install a collection and control system as provided in paragraph (b) of this section and § 60.752(b)(2) of subpart WWW.

(ii) If the landfill is permanently closed, a closure notification shall be submitted to the Administrator as provided in § 60.35c of this subpart and § 60.757(d) of subpart WWW.

3. Amend § 60.35c by adding paragraphs (a) and (b) after the introductory text to read as follows:

**§ 60.35c Reporting and recordkeeping guidelines.**

\* \* \* \* \*

(a) For existing MSW landfills subject to this subpart the initial design capacity report shall be submitted no later than 90 days after the effective date

of EPA approval of the State's plan under section 111(d) of the Act.

(b) For existing MSW landfills covered by this subpart with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the initial NMOC emission rate report shall be submitted no later than 90 days after the effective date of EPA approval of the State's plan under section 111(d) of the Act.

**Subpart WWW—[Amended]**

**§ 60.75 [Amended]**

4. Amend § 60.751 by adding the following sentence to the end of the definition of "modification": "Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion."

5. In § 60.759, revise the first and second sentence in (a)(3)(iii) to read as follows:

**§ 60.759 Specifications for active collection systems.**

(a) \* \* \*

(3) \* \* \*

(iii) The values for  $k$  and  $C_{NMOC}$  determined in field testing shall be used if field testing has been performed in determining the NMOC emission rate or the radii of influence (this distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero). If field testing has not been performed, the default values for  $k$ ,  $L_0$  and  $C_{NMOC}$  provided in § 60.754(a)(1) or the alternative values from § 60.754(a)(5) shall be used. \* \* \*

\* \* \* \* \*

[FR Doc. 99-2988 Filed 2-23-99; 8:45 am]

BILLING CODE 6560-50-P

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

**ORIGINAL**

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 for the West Virginia Division of Environmental Protection, Office of Air Quality at the Conference Room, 1558 Washington Street, East, Charleston, West Virginia, 25305, commencing at 6:47 p.m. on the 19th day of July 1999, pursuant to notice.

---

**Q & A Court Reporters, Inc.**

"Quick & Accurate"

223 Nash Lane

Buffalo, West Virginia 25033

(304) 937-2555 or (800) 937-9512



1           In order to obtain separate transcripts for each of  
2 the rules, the hearing procedure this evening will be to  
3 introduce each rule individually, allow time for oral  
4 comment and close the hearing for that particular rule.  
5 Written comments for any rule may be submitted at the end  
6 of this public hearing tonight. For those of you wishing  
7 to make oral comments, a sign-up sheet was provided and  
8 sign up now if you haven't already done so. Please limit  
9 your comments to five minutes. The comment period has  
10 been extended until July 28th until 5:00 p.m. Written  
11 comments may be sent to the attention of Edward L. Kropp,  
12 Chief, Office of Air Quality, 1558 Washington Street,  
13 East, Charleston, 25311. Comments will not be accepted by  
14 e-mail. Your comments will be made a part of the rule-  
15 making record.

16           The court reporter is Ms. Paula J. Moore. She's with  
17 Q & A Court Reporters, Incorporated. If anyone desires a  
18 transcript of this proceeding, please contact Ms. Moore at  
19 937-2555.

20           The purpose of this public hearing is to accept  
21 comments on 45 CSR 23, "To Prevent and Control Emissions  
22 from Municipal Solid Waste Landfills." This rule  
23 establishes standards of performance and emission  
24 guidelines for municipal solid waste landfills pursuant to

1 Section 111 of the Federal Clean Air Act as amended in  
2 1990.

3 It is the intent of the Director to adopt these  
4 standards by reference. These standards require  
5 facilities with municipal solid waste landfill emissions  
6 exceeding 50 megagrams per year, approximately 55.12 tons,  
7 to install an air pollution control system within 2.5  
8 years. It is also the intent of the Director to adopt  
9 associated reference methods, performance specifications  
10 and other test methods which are appended to such  
11 standards.

12 The proposed rule is required to control air  
13 pollutant emissions from municipal solid waste landfills  
14 pursuant to Section 111 of the Federal Clean Air Act of  
15 1990. The United States Environmental Protection Agency  
16 promulgated the New Source Performance Standards, Subpart  
17 WWW, and Emission Guidelines, Subpart Cc, for municipal  
18 solid waste landfills on March 12, 1996. Amendment of  
19 this rule is proposed to adopt by reference definitions,  
20 technical amendments and corrections which appeared in the  
21 direct final notice published on June 16, 1998, 63 Federal  
22 Register 32743, and on February 24, 1999, the Federal  
23 Register, Volume 64, Page 9258.

24 Upon authorization and promulgation of revisions to

1 45 CSR 23, the rule will be submitted to the U.S.  
2 Environmental Protection Agency as part of the State's  
3 Plan for Municipal Solid Waste Landfills.

4 The floor is now open for public comment. (No  
5 response.) There being nothing further, the public  
6 hearing for 45 CSR 23 is concluded.

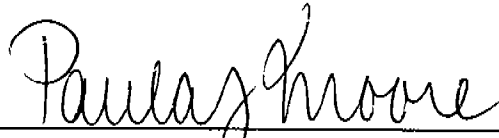
7 (WHEREUPON, the hearing was  
8 concluded at 6:50 p.m.)

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

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

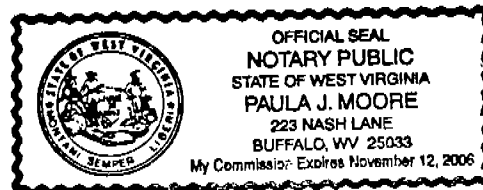
I, the undersigned, Paula J. Moore, a Certified Court Reporter and Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned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

Given under my hand and official seal this 27th day of July 1999.



Certified Court Reporter  
Notary Public

My commission expires November 12, 2006,



Division of Environmental Protection

6:00 PM

Public Hearing: OAR Legislative Rules - 2000 Session Time/Date: July 19, 1999

NAME

ADDRESS

45CSR23

COMMENT  
YES NO

1. Sam Grady Lewis - LW	4408 Venable Ave SE		
2. Sam Danner	HC 80 BARRETT ROAD WV		
3. Bill Haver	HE 65 BAR 42-A LOOKOUT WV		
4. Ted Parker	1615 Washington St East Charleston		✓
5. Ron Miller	1001 Virginia St, E, Guy		✓
7. Bruce Caudle	WVMA 1624 KANAWHA BLVD, CHARLESTON, WV 25301		
3. Ethel DUNNIGLEY	WV DEP CHS 1555 Washington St E (Dunns house) WV		✓
3. Jesse Jenkins	"		✓
10. Robert Keathley	"		✓
11. Karen Watson	1615 WASHINGTON ST E, CHAS 25311		✓
2. James Kotson	4127 HOME AVE R10D, MORGANTOWN, WV 26508	✓	
13. Marshall Bolivar	PO Box 68 Washington, WV 26180 GE Plastics		✓
14. Sam Nicks	WV DEP EAD 10 MOUNTAIN RD LENO 25143		
15. Tony Bennett	WV DEP OAD CHARLESTON		✓

Division of Environmental Protection

6:00 PM

Public Hearing: DAQ Legislative Rules - 2000 Session Time/Date: July 19, 1999

NAME ADDRESS ADDRESS 45-05K 23 COMMENT YES NO

1.	<u>Don Mottawa</u>	<u>Box 144</u>	<u>Legislative</u>	<u>WV 24931</u>		
2.	<u>Joseph Beckett</u>	<u>Box 66</u>	<u>Charlottesville</u>	<u>WV 24931</u>		
3.	<u>Zick W. O'Brien</u>	<u>PO Box 190</u>	<u>Clarksburg</u>	<u>WV 26302</u>		X
4.	<u>Kathy G. Beckett</u>	<u>PO Box 553</u>	<u>Charleston</u>	<u>WV 25322</u>	X	
5.	<u>Tim Mallon</u>	<u>301 Virginia</u>	<u>St. E Charleston</u>	<u>WV 25327</u>	X	
6.	<u>Sara E</u>	<u>1450</u>	<u>Market</u>	<u>Clarksburg</u>	<u>WV 26201</u>	X
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						

4406 Venable Ave SE  
Charleston, WV 25304  
July 28, 1999

Edward L. Kropp  
Chief, Office of Air Quality  
West Virginia Division of Environmental Protection  
1558 Washington Street East  
Charleston, West Virginia 25311

Dear Mr. Kropp;

The following comments are in regard to the package of air quality proposed rules. While I represented the League of Women Voters in the stakeholder process, they are not the final or official word of the League, but are my own.

Having read all the proposed rules in one sitting, I am struck first by the amount of discretion given to the Director. I recognize that discretion and judgement are necessary to the effective enforcement of air quality regulations, but in 45CSR 3, section 5.4, the director has discretion to revoke the operating permit of a hot mix asphalt plant that did not maintain the requirements of the rule. Since the requirements are basic--no particulates beyond a certain standard, I believe that the rule should read, "shall revoke, unless good cause is shown by the permittee". Similar language should be used in the equivalent sections throughout this regulatory package. Giving wide latitude to the Director could provide a legal defense to favoritism, should a Director be so inclined.

I am similarly concerned about the lack of deadlines throughout the proposed rules. While it is clearly inappropriate to delineate rigid timelines, it is appropriate to expect that the agency will act expeditiously in its contacts with the regulated community and the public. It would strengthen the rules if such language was placed throughout the rules package where appropriate.

The process used by the Office of Air Quality in revising the rules is excellent. Bringing together the stakeholders to work together, and come to a common understanding, is a process that should be duplicated, not only within the Divisions of Environmental Protection, but throughout state government. I hope that as additional air quality rules are revised that the same process will be used. The rules are indeed improved by this process. I do support the proposed rule revisions and trust that they will be approved by both the Legislature and the EPA.

Thank you for making it possible for me and other citizens to participate in this important project. Inclusiveness made for a better product than earlier rule writing procedures.

Sincerely

  
Conni Gratop Lewis

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029



Mr. Edward L. Kropp, Chief  
Office of Air Quality  
West Virginia Division of Environmental Protection  
1558 Washington Street, East  
Charleston, West Virginia 25311

July 1, 1999

Dear Skipp:

On June 28, 1999, we received your Notice of Public Hearing and Public Comment Period as well as copies of the proposed revisions to 16 rules which your office is proposing to adopt, effective the spring of 2000. Of these 16 proposed rules, we have determined that 14 of them may be impacted by current federal requirements. Therefore, we wish to review these proposed rules and provide your agency with any comments we may have for the public record. This allows your agency to make any agreed upon revisions to the proposed rules pursuant to our comments prior to their formal adoption. This would pave the way for expeditious approvals of these revised rules by EPA at the time of formal submittal.

However, given that we would have had only 14 working days until your scheduled date to close the public record, our office will not have time to perform the comprehensive review we normally provide to your agency. Therefore, I am requesting an extension of the date by which comments may be entered into the public record. If you could provide a 30-day extension we would be most appreciative, however, even a 15-day extension would be helpful. EPA would much prefer to identify any concerns we might have to your office while the State regulations are at the proposal stage, and work with you to resolve these concerns before West Virginia formally adopts and submits these regulations for federal approval.

I know you share my belief that our agencies should work together to avoid disapprovals and the uncertainties they pose to the regulated community and the public. Please let us know your decision as soon as possible by having your staff contact Harold Frankford at 215 814-2108.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marcia".

Marcia L. Spink, Associate Director  
Office of Air Programs  
Air Protection Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

		Date: 7/1/99
To	Skip Kropp	
Office	West Virginia DEQ, Office of Air Quality	
Phone Number	304/588-2496	
Fax Number	304/558-3287	
Subject	Request for Extension of Time to Submit Comments	
From	Marcia L Spink EPA PHONE: (215) 814-2104 FAX: (215) 814-2124	
NUMBER OF PAGES INCLUDING COVER SHEET 2		
ORIGINAL TO BE SENT: Yes _____ No _____		
MESSAGE: Request for extension of time to submit comments on West Virginia proposed air quality rules.		

**Public Hearing Statement of  
Kathy G. Beckett  
On Behalf of the West Virginia Chamber of Commerce  
July 19, 1999**

My name is Kathy G. Beckett, an attorney with the law firm of Jackson & Kelly PLLC. I am offering the following statement on behalf of the West Virginia Chamber of Commerce ("the Chamber") concerning the rulemaking package presented for comment by the Office of Air Quality addressing 45 CSR 1, 2, 3, 4, 5, 6, 7, 10, 12, 16, 17, 18, 23, 25, 33, and 34. Although the Chamber will be filing more detailed written comments concerning each of these rules by the filing deadline of July 28, 1999, it would like to offer the following general comments on this rulemaking package.

The Office of Air Quality ("OAQ") held a public meeting in Flatwoods, WV on November 17, 1998, where it announced its goal of updating and "harmonizing" OAQ's existing rules in time for submittal to the 2000 Legislature. It was announced that all rules were open for discussion and review. With that announcement began a rigorous schedule of meetings to begin the process of collecting comments and ideas about the need to update and streamline the state's air quality regulatory program. For those of you who attended the meetings, I do not have to tell you about the tireless commitment of time the OAQ staff devoted to managing the review process. Additional support from the stakeholder participants combined to create a very rich experience.

The Chamber is a strong supporter of the stakeholder review process. The model where a state administrative agency invites the public to engage in an honest, thoughtful, open and informal exchange of interests and ideas with the goal of proposing public policy is an excellent one. Those who attended and participated in the meetings that have taken place over the past several months were presented with an opportunity to inquire as to the

purpose of various provisions, question one another's needs, suggest solutions to issues, and propose language, all of which were presented to the Chief for his consideration." The more varied the vantage points of those engaged in the discussion the more creative the answer became. The Chamber applauds this process and encourages the agency and the public to look for other opportunities to engage in such an exercise.

As will be identified in the written comments filed on behalf of the Chamber, there is a very delicate balance that is created in the spirit of compromise. Some of the proposed modifications that were the subject of the review process represent concepts that meet the specific needs and concerns of certain stakeholders. Recognition of the needs of all stakeholders and balancing those needs against one another <sup>and the law</sup> is what the development of public policy is about. Great efforts were made during the discussions to blend the needs of the group into the recommended changes. The Chamber recommends that the OAQ to develop a thorough Response to Comments, as a means of recording the intent of the modifications that have been made.

What made this process work is the stated goal of streamlining and updating the program. Where appropriate, the OAQ has proposed incorporation of the updated federal air program. The OAQ has also proposed removal of provisions that are no longer useful. Although this package certainly represents progress, there remain antiquated regulatory concepts that we would all be well served to review again. Tossing away items from our past can be difficult, but the result could be a fresh, new, and efficient regulatory program.

Tonight the Chamber is participating in the next phase of the public review process by providing oral comments on the proposed regulatory changes that have been inspired, in part, by the recommendations of the stakeholders. The Chamber supports the stakeholder process and supports this rulemaking package.

KAREN EARL BILDM  
LAWREN WATSON  
JACKSON & KELLY PLLC

ATTORNEYS AT LAW

1600 LAIDLEY TOWER  
P. O. BOX 553

CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130

<http://www.jacksonkelly.com>

(304) 340-1019

[kbeckett@jacksonkelly.com](mailto:kbeckett@jacksonkelly.com)

July 27, 1999

1144 MARKET STREET  
WHEELING, WEST VIRGINIA 26003  
TELEPHONE 304-233-1000

1660 LINCOLN STREET  
DENVER, COLORADO 80264  
TELEPHONE 303-390-0003

175 EAST MAIN STREET  
LEXINGTON, KENTUCKY 40595  
TELEPHONE 606-255-9500

2401 PENNSYLVANIA AVENUE N.W.  
WASHINGTON, D.C. 20037  
TELEPHONE 202-973-0200

MEMBER OF LEX MUNDI  
THE WORLD'S LEADING ASSOCIATION  
OF INDEPENDENT LAW FIRMS

300 FOXCROFT AVENUE  
MARTINSBURG, WEST VIRGINIA 25401  
TELEPHONE 304-263-9800

256 RUSSELL AVENUE  
NEW MARTINSVILLE, WEST VIRGINIA 26155  
TELEPHONE 304-455-1751

6000 HAMPTON CENTER  
MORGANTOWN, WEST VIRGINIA 26505  
TELEPHONE 304-599-3000

412 MARKET STREET  
PARKERSBURG, WEST VIRGINIA 26101  
TELEPHONE 304-424-3490

1000 TECHNOLOGY DRIVE  
FAIRMONT, WEST VIRGINIA 26554  
TELEPHONE 304-368-2000

Edward L. Kropp, Chief  
Office of Air Quality  
WV Division of Environmental Protection  
1558 Washington Street, East  
Charleston, West Virginia 25311

Re: Proposed Modifications to 45 CSR  
1,2,3,4,5,6,7,10,16, 17, 18, 23, 25, 33, and  
34.

Dear Chief Kropp:

The West Virginia Chamber of Commerce ("Chamber") was a faithful participant in the Office of Air Quality ("OAQ") convened Stakeholder Regulatory Review Workgroup. From those meetings came a number of recommendations and suggestions that were presented to the OAQ for consideration in proposing revision to the West Virginia air quality regulatory program. The Chamber extends its compliments to the OAQ staff for the long hours it committed to this effort. The Chamber is supportive of the review process as a forum available to everyone to listen, learn, and draft proposed state air policy. The open exchange of concerns, ideas, and recommendations has resulted in a proposal package the genesis of which the participants can clearly understand. In some instances compromise was required. The Chamber supports this package of regulatory revisions in the spirit of compromise. These recommended proposals, as a whole, are appropriate and result in improvement in the state air quality program.

The following detailed comments are provided on behalf of the West Virginia Chamber of Commerce.

#### 45 CSR 2 - Particulate Emissions from Boilers

Section 3 Visible Emission Standards - The Chamber had urged consideration of modifications to the criteria for allowing an alternative visible emission standard. The Chamber supports the inclusion of the modifications to the regulation to make it more consistent with the six minute averaging of the rule and to meet the needs of the regulated community, without compromising the ultimate ambient air quality for particulates.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools, to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 2, the Chamber supports the regulatory revisions.

Section 8.4 addresses the potential need for the development of alternatives to the testing, monitoring and reporting requirements of the rule. The Chamber is supportive of the inclusion of this concept. The OAQ proposes to recognize unique operational characteristics that either make the implementation of Regulation 2, Section 8 impossible or unreasonable. This modification is evidence of the OAQ's commitment to work toward the development of a program that works with the regulated community to assure an effective air quality regulatory requirement. The Chamber applauds these and other similar efforts.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

#### **45 CSR 3 - Hot Mix Asphalt**

Regulation 3 had not undergone review since 1979. Many of the modifications to this regulation have been proposed to update and streamline the rule. The Chamber is supportive of the proposed changes.

Section 3.2 Start-up and Shut-down of Operations - During the Stakeholder Review Process, the Chamber had urged regulatory recognition of shut-down conditions, as has been done under the remainder of the OAQ regulatory program. The OAQ has proposed inclusion thereof. Again, the Chamber applauds the efforts of the OAQ to streamline the regulations and create consistency where possible.

#### **45 CSR 4 - Objectionable Odors**

Regulation 4 is being proposed for significant modification in response to the OAQ's recommendations. The Stakeholder Review Process engaged in lengthy discussions over the concerns of the agency and the problems they wished to see addressed. The Chamber participated in those discussions and is supportive of this ultimate proposal. This rule is new and we will all learn more about its impact on the air quality program as the agency begins to administer it. This proposal is a good first attempt.

Section 2.5 Objectionable Odors - This proposed definition underwent a great deal of discussion during the Stakeholder Review Process. The Chamber is supportive of this definition based upon the representation by the agency that this odor regulation would be implemented based upon a combination of factors (investigations, determinations, and complaints). Recognition of the need for a combination of factors gives the definition of "objectionable odors" the depth it needs to avoid abuse by reported complaints that may or may not be inspired by an environmental condition. The Chamber is supportive of a well designed regulatory program that assures the environmental regulations will not be subject to abuse by parties who may wish to use it to advance alternative political objectives.

Section 4.1 Accidental and Other Infrequent Emissions, Reporting - The Chamber had advanced a concern about the need to create an affirmative obligation for the reporting of accidental or other infrequent emissions that was reasonable. The OAQ's proposal both creates the obligation and clarifies that such a report is due upon the reasonable determination by a person that they are responsible for the objectionable odor. The Chamber is supportive of this language and believes its reasonableness standard complements other more stringent reporting obligations that are truly environmentally-based. The Chamber notes a typographical error where the last line of this regulation should read: "reasonably has knowledge of such discharge."

Section 7 Enforcement - This language is written such that it fails to recognize the notification and investigation process described in Section 3 of this rule. The Chamber is supportive of the need for the OAQ to preserve its authority to exercise its enforcement authorities when the emission of air pollution is causing a violation of the WV Air Pollution Control Act. The Stakeholder Review Process invested significant resources in developing this rule. The Chamber presumes the OAQ intended for this language in Section 7 as a reservation of enforcement authority that would be invoked after reasonable efforts to implement Section 3 had failed.

#### **45 CSR 5 - Coal Preparation Plants, Coal Handling, and Coal Refuse**

This regulation has been expanded to incorporate the current 45 CSR 1 which regulates coal refuse. In the interest of consolidating the air quality regulations that impact the coal industry, it was proposed that its requirements be combined with 45 CSR 5. The Chamber participated in the efforts to combine these regulations and complements the OAQ's efforts to affect this combination as seamlessly as possible. This modification is consistent with the intent and purpose of the Stakeholder Review Process which was to revise and update.

Sections 3.2 and 3.3 Particulate Emission Limits - The OAQ has proposed revision to the opacity limits by offering the statement, during the Stakeholder Review Process, that these revisions were based upon the need to address the calculation of averaging, as opposed to aggregation. The regulatory impact of these changes was not readily apparent to any of the participants in the Review Process, to include the OAQ. It is the understanding of the Chamber that these revisions were not intended to be submitted, since the Stakeholder participants were so unclear as to the impact of the proposed change. The Chamber urges that the regulation be restored to its original language.

Section 10 Reports and Testing - The Chamber supports the proposed modifications to this section to emphasize the EPA test methods used by most operations. The proposal merely updates and refines the regulation without changing its effect.

Section 11 Variance - The proposed modifications to the administrative process of granting a variance were discussed at length during the Stakeholder Review Process. The intent of the modifications was to provide a well defined process for managing equipment failure. The Chamber supports the OAQ's inclusion of these revisions. The suggested modifications will serve to enhance the smooth administration of the variance process that currently exists. Administrative efficiency is an important factor and the Chamber applauds the agency's efforts to incorporate such changes.

#### **45 CSR 6 - Combustion of Refuse**

Section 3.1.c.4 Pre-Approval of Burning - The proposed revisions to Regulation 6 are principally those revisions recommended by the OAQ during the Stakeholder Review Process. Generally, these modifications have been designed to update this regulation. The Chamber is supportive of the proposed changes and further recommends that the agency consider the development of an interpretive rule, or other appropriate administrative tool for implementation, that will provide guidance to the regulated community concerning the new requirement that approval to conduct burning of land clearing debris must be obtained. Consistent with the stated goals of this regulatory review process, clear communication as to what the agency expects of the regulated community will go far to assure smooth implementation of the modified provisions of Section 3.1.c.4.

#### **45 CSR 7 - Particulate Emissions from Manufacturing Processes**

The Stakeholder Review Process devoted significant time to exploring the particulate emissions control program as set forth under Regulation 7. This is a complex rule that attempts to regulate a very diverse universe of manufacturing processes. This fact alone seriously complicates any effort to streamline and clarify its intent. The Chamber extends its compliments to the OAQ staff for its efforts during the Stakeholder discussions to explain the agency's needs with regard to this rule. The Chamber recommends for consideration the future need to review the merit of splitting Regulation 7 into several small regulations that are industry category specific. Such a split would significantly simplify the implementation and compliance with this rule.

Section 2.18 Maintenance Operations - The Chamber had proposed consideration by the Stakeholder Workgroup the need to recognize that certain maintenance operations result in emissions of particles that are not clearly defined under Regulation 7. This lack of clarity had resulted in inconsistent interpretation and enforcement. In response to that request, the OAQ has proposed a definition and a well defined exemption for certain maintenance operations that are not adversely impacting air quality under Section 10.3. The Chamber is supportive of these revisions as resulting in clarification of the regulation. These revisions recognize the fact that certain maintenance operations are insignificant and infrequent sources of particles not warranting extensive regulation, but instead warranting management through good engineering practices.

Section 2.39.d Type 'd' Manufacturing Processes - The Chamber had raise concerns over the need to clarify the scope of those manufacturing processes in which material of any origin undergoes a chemical change. In response to those comments, the OAQ has proposed the phrase "and this chemical change results in the emission of particulate matter to the atmosphere." The Chamber supports this change as one that serves to enhance the implementation of and compliance with this rule.

Section 3.7 Emissions from Storage Structures - The revisions to this section were intended by the Stakeholder Workgroup to be clarifying modifications to the requirement to control emissions from storage structures. The Chamber supports this revision as one that serves to streamline the requirement to control emissions from storage structures.

Section 5 - Control of Fugitive Particulate Matter - It was proposed by the Chamber that it would be appropriate to add language to expand the meaning of a fugitive particulate control system to include process equipment design, control equipment design or operation and maintenance procedures. These are important and effective alternatives that warranted recognition in the regulatory program. The OAQ has proposed inclusion of these alternatives confirming these fugitive control measures. The Chamber supports these modifications as enhancements to the meaning of the rule.

Section 10 - Alternative Visible Emission Standards - The Stakeholder Workgroup engaged in extensive discussions over the need to provide a similar process for demonstrating the need for an alternative visible emission standard for start-up and shutdowns as exists for sources of particles that are regulated from boilers. The results of those discussions are found in the proposed new section 10.4. The Chamber supports these recommended changes that create a process by which a manufacturing source operation is afforded the opportunity of demonstrating the need for an alternative standard that is protective of air quality.

Sections 10.5 and 10.6 Deminimus Sources of Particles - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of particles and mineral acids. Inclusion of these new sections is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 11 - Alternative Emission Limits for Duplicate Source Operations - The OAQ has proposed a section to address duplicate source operations that elect to petition for an alternative emission limit in response comments raised in the Stakeholder Review Process. It was recognized by the Stakeholder Review Workgroup that the issues surrounding the state "duplicate source" rule are very complex. The Chamber supports inclusion of this section that serves to create a review process for alternative emission limits for duplicate source operations. This provides an alternative to litigation which enhances regulatory efficiency.

The Chamber advocated for the removal of the "duplicate source" provisions as an archaic regulatory tool that has long since been rendered obsolete by the Clean Air Act Amendments and specifically by the NSR program. It is recommended that future modifications to Regulation 7 should focus on the need to eliminate these requirements.

## **45 CSR 10 - Sulfur Oxides**

Section 3.4.b. Individual Allowable Stack Emission Rates - The Chamber supports the OAQ's inclusion of provisions that would allow the agency to address those facilities with individual stack allowable emission rates differing from those calculated under the rule, based upon compliance with the criteria set forth in 3.4.b.1 through 3.4.b.6. This rule revision is evidence of the agency's interest in working with the regulated community to assure an implementable program that results in protection of air quality.

Section 4.1.e Deminimus Operations - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of sulfur oxides. Inclusion of this new section is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 10, the Chamber supports the regulatory revisions.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

Section 10.3 Exemptions - The Chamber supports the proposed exemption from the testing, monitoring, recordkeeping and reporting requirements for those operations that are known not to emit levels of sulfur oxides to warrant such requirements. These proposed modifications are clearly intended to streamline the regulation and provide for an appropriate level of regulation commensurate with the environmental impact.

## **45 CSR 17 - Fugitive Particulate Matter**

The proposed revisions to Regulation 17 were presented to the Stakeholder Review Workgroup by the OAQ. The OAQ expressed the need to have a regulatory tool that could be used to require management of fugitive emissions from sources that were not otherwise subject to the OAQ regulatory program. In recognition of that expressed need, it was agreed by the Stakeholder Workgroup that Regulation 17 should be significantly expanded. The

Chamber is supportive of these proposed changes that create a process by which sources would be contacted by the agency and efforts expended to develop a reasonable emissions control or suppression program.

**45 CSR 18 - Meat Firing**

The Stakeholder Workgoup discussed the history of the promulgation of the meat-firing regulation and concluded that this regulation was no longer warranted, based upon the fact that its provisions had not recently been invoked, implemented, or useful in a manner to the public, the agency or the potential regulated community. The Chamber supports the elimination of this regulation as clearly within the scope of updating the OAQ program.

Additional modifications have been proposed by the Office of Air Quality for the following regulations to make necessary and appropriate cross-references to the federal program. The Chamber is supportive of these modifications.

**45 CSR 16 - New Source Performance Standards**

**45 CSR 23 - Municipal Solid Waste Landfills**


**45 CSR 25 - Hazardous Waste Treatment, Storage, or Disposal Facilities**

**45 CSR 33 - Acid Rain**

**45 CSR 34 - Hazardous Air Pollutants**

In conclusion, the Chamber provided an oral statement at the hearing of July 19, 1999. In that statement the Chamber urged that a thorough Response to Comments be provided by the OAQ concerning the proposed rulemaking package that will explain the intent of the modifications as was agreed during the Stakeholder Review Process. This will serve to memorialize the changes that will be made to the regulations and provide guidance concerning the implementation of these changes.

Respectfully, submitted this 27th of July, 1999.



Kathy G. Beckett  
Counsel to the West Virginia Chamber  
of Commerce  
Jackson & Kelly, PLLC  
Post Office Box 553  
Charleston, West Virginia 25311  
(304) 340-1019  
(304) 340-1130 facsimile

## 45CSR23

### TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS

#### RESPONSE TO COMMENTS

On July 19, 1999 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR23. Written comments were accepted through 5 PM on Wednesday, July 28, 1999. Two persons commented at the public hearing concerning all of the OAQ's proposed rules. Both commenters were generally supportive of the proposed rules and the stakeholder process that was utilized by the OAQ to generate the proposed rules. One comment was received from the United States Environmental Protection Agency, Region III, requesting that the public comment period be extended. The OAQ responded to this comment by extending the comment period from July 19, 1999 to July 28, 1999. OAQ received three written comments on the rule from the following: U.S. Environmental Protection Agency (EPA) Region III, Waste Management, Inc., and the West Virginia Chamber of Commerce. The OAQ has summarized these comments and provides the following response.

#### I. Commenter: U.S. Environmental Protection Agency, Region III

##### COMMENT 1.

*EPA asks whether OAQ has the legal authority to incorporate by reference Subpart Cc into the state rule so it becomes enforceable under state law. EPA requests an opinion from the State Attorney General that the OAQ possesses this authority.*

##### RESPONSE 1.

An explanation of the legal authority is provided under Section VII of the State's Plan under Section 111(d) for existing municipal solid waste landfills. Section VII was prepared by Karen G. Watson, attorney for OAQ. Pursuant to W.Va. Code §22-1-6(d)(7), the OAQ may employ in-house counsel in lieu of using the services of the State Attorney General. Ms. Watson is therefore authorized to provide legal services and represent the OAQ in this matter.

Quoting from the State's Plan at Section VII on page 4: "The DEP has the statutory and regulatory authority under W.Va. Code §§ 22-5-1 et seq. to adopt and enforce rules and regulations to implement the State Plan (Appendix D). In particular, W. Va. Code §22-5-4(a)(4) authorizes the Director to promulgate legislative rules relating to the control of air pollution. The DEP, effective May 1, 1998, promulgated a legislative rule, 45CSR23, which specifically incorporates by reference the federal emission guidelines applicable to designated facilities contained in 40 C.F.R. Part 60 Subpart WWW."

Again quoting from Section VII on page 5: “Regarding the enforcement of applicable laws, regulations, standards, and compliance schedules, the DEP has several enforcement mechanisms available under State law, including permits, administrative orders, civil and criminal penalties, and injunctive relief.”

COMMENT 1.a. *EPA suggests amending §45-23-1.5 of the OAQ regulation to read, “... this rule incorporates by reference, 40 CFR 60, subpart WWW, effective on March 12, 1996, and as amended on June 16, 1998 and February 24, 1999”. Delete reference to subpart Cc.*

RESPONSE 1.a. OAQ does not agree with the commenter. Although the recommended language is more specific, the proposed rule language accomplishes the same result and is more consistent with OAQ’s approach to the incorporation by reference of federal regulations. By incorporating all federal regulations included in the Federal Register up to a certain date, the agency ensures that all relevant regulations are included.

COMMENT 1.b. *EPA suggests amending §45-23-3 of the OAQ regulation to include specific language with respect to EPA landfill EG requirements of §§60.32c, 60.33c, 60.35c, and 60.36c.*

RESPONSE 1.b. As stated in Response 1 above, OAQ believes it has the legal authority to incorporate by reference the Federal Emission Guidelines. EPA’s suggested language runs the risk of “missing” pertinent federal regulations (e.g., 40 CFR §60.34c). OAQ followed EPA’s suggestion in the May 1, 1998, original rule by including the language “Subpart WWW, as referenced in 40 CFR Part 60 Subpart Cc.” (Emphasis added). OAQ believes this remains a sound approach. Additionally, since some of the recent amendments to Subpart Cc do not directly reference sections of Subpart WWW, the rule directly references Subpart Cc.

COMMENT 2. *EPA states that unless OAQ proposes in its regulation that all affected landfills must achieve compliance with the emission standards and other requirements on or before 1 year after EPA 111(d) plan approval, the increments of progress stipulated in the May 1998 OAQ landfill regulation at §§45-23-3.3.b and c must be retained.*

RESPONSE 2. OAQ is proposing to incorporate by reference the most recent federal regulations and the corresponding compliance dates. Therefore, it is unnecessary to retain the specific increments of progress contained in the original rule.

COMMENT 3. *EPA states that revising §§ 45-23-3.3.d and e to be consistent with the amended EG at §§ 60.35c(a) and (b) is acceptable. However, the required dates for submittal of the initial design capacity and MNOC emissions rate report must be clearly stated in the OAQ regulation. For any report submittal date, or other equipment, that is more stringent than that required under the EG, please discuss OAQ's legal authority for imposing requirements more stringent than EPA's.*

RESPONSE D. As stated in Response I.1.b. above, the proposed rule clearly incorporates by reference the federal counterpart regulations, effective through June 1, 1999. No stringency discussion is therefore needed.

**II. Commenter: Robinson & McElwee for Waste Management, Inc.**

COMMENT A. *Emergency Rulemaking. The commenter states that the proposed amendments to 45CSR23 appropriately seek to update the Division's regulations to incorporate several fundamental changes to the 1996 federal regulations. The commenter urges the agency to promulgate these amendments to 45CSR23 as an emergency rule.*

RESPONSE A. OAQ does not believe an emergency rule is necessary and intends to pursue revisions to the rule through the normal rule-making process. However, OAQ anticipates exercising enforcement discretion on a case-by-case basis in the interim for instances of noncompliance where the current State rule differs from the federal counterpart.

COMMENT A. *45 CSR 23-1.5 -- Incorporation by Reference. The proposed rule adopts by reference 40 CFR Part 60, Subparts WWW and Cc effective "July 1, 1998, as amended by the Federal Register through June 1, 1999." In order to provide greater specificity, it would be helpful to add the following parenthetical: "(including amendments published in the Federal Register on June 16, 1998, at 63 Fed. Reg. 32743, and on February 24, 1999, at 64 Fed. Reg. 9258).*

RESPONSE A. See Response I.1.a.

COMMENT B. *45 CSR 45 CSR 23-5.1.a. -- Permits (Exclusion). The commenter states that the purpose of this provision is to exclude from permitting*

*under 45CSR13 those changes made at new or existing landfills in order to comply with the federal emission control requirements which are incorporated by reference. The commenter believes this provision should be revised to be consistent with the exclusionary provision found in the definition of “existing landfill” at 45 CSR § 23-2.4, which mirrors the definition found in the federal counterpart rule.*

RESPONSE B.

OAQ does not agree that the requested revision is appropriate. Although the current language in subdivision 5.1.a exempts a source from obtaining a permit under 45CSR13 because the source is subject to an emission control rule, it does not follow that the source should be exempted when it makes a change in the physical or operational method which causes an emissions increase above the amounts in subsection 2.18 of 45CSR13. OAQ believes it is important to review any such emission increases under the auspices of a Regulation 13 permit.

**II. Commenter: West Virginia Chamber of Commerce**

COMMENT: *The Chamber is supportive of the modifications to 45CSR23.*

RESPONSE: No response required.