

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

FORM #4

Do Not Mark In This Box

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA  
SEP 25 11 33 AM '99

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

*Carrie J. Chambers*

Authorized Signature



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



---

## West Virginia Bureau of Environment

---

Cecil H. Underwood  
Governor

Michael C. Castle  
Commissioner

October 26, 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 will serve as my approval to file the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as Notice of Rule Modification of a Proposed Rule.

Your cooperation in this request is very much appreciated. If you should need further information or require additional information, please feel free to call Carrie Chambers in my office at 759-0515.

Sincerely,

Michael C. Castle  
Commissioner

MCC:cc

cc: Karen Watson  
Carrie Chambers

45CSR23

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

Oct 26 11 38 AM '99

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 WWW 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 WWW, as amended. Terms not defined therein shall have the meaning given to them in the federal Clean Air Act, 40 CFR Subparts A and B, or this Rule.

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

2.3. "Director" shall mean the ~~D~~director of the ~~West Virginia D~~division of ~~E~~environmental ~~P~~protection 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(c)(1) or (2)~~

~~3.3.c.2 The provisions of 40 CFR 60.752(b)(2)(i)(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.c In lieu of 40 CFR 60.758(a), the following provision applies: Each owner or operator of a MSW landfill subject to the provisions of 40 CFR 60.752(b) shall keep for at least 5 years up-to-date, readily accessible, on-site records of the maximum design capacity, surface monitoring design plan, the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Either paper copy or electronic format records are acceptable.

**§45-23-4. Director.**

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

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

4.1.b. Where provisions occur which refer to:

4.1 b.1. alternate means of emission limitations;

4.1 b.2. alternate control technologies,

4.1.b.3. innovative technology waivers,

4.1.b.4. alternate test methods;

4.1 b.5. alternate monitoring methods;

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

4.1.b.7. applicability determinations; or

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

**§45-23-5. Permits.**

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

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

**§45-23-6. Inconsistency Between Rules.**

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