

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2008 AUG 29 AM 11:04

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

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

CITE AUTHORITY: W. Va. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES  NO

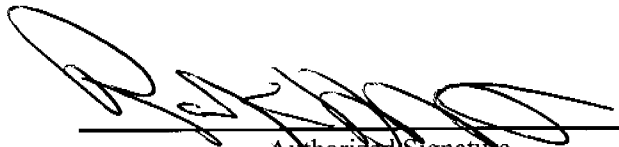
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: Control of Air Pollution From Hazardous Waste Treatment, Storage and Disposal Facilities

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

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

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

  
\_\_\_\_\_  
Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: August 29, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Environmental Protection  
Division of Air Quality

601 57th Street, S.E.

Charleston, West Virginia 25304

LEGISLATIVE RULE TITLE: 45CSR25 - Control of Air Pollution from Hazardous Waste  
Treatment, Storage and Disposal Facilities

1. Authorizing statute(s) citation W. Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
July 9, 2008

b. What other notice, including advertising, did you give of the hearing?  
Public Notice placed on Department of Environmental Protection's web site,  
distributed via the agency's mailing list, and in a Class I legal ad published in the  
Charleston Newspapers.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
Public Hearing/Comment Period Ended - August 11, 2008

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

Attached \_\_\_\_\_ No comments received X

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

August 29, 2008

---

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

John A. Benedict, Director  
601 57th Street, S.E.  
Charleston, WV 25304  
Phone: (304) 926-0499 ext. 1966

---

Fax: (304) 926-0488

---

John.A.Benedict@wv.gov

---

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

See "f" above

---

---

---

---

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

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

N/A

---

---

---

---

b. Date of hearing or comment period:

N/A

---

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

N/A

---

d. Attach findings and determinations and reasons:

Attached N/A

---

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR QUALITY**

**BRIEFING DOCUMENT**

**Rule Title:** 45CSR25 - "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities."

**A. AUTHORITY:** W.Va. Code §§22-5-4 and 22-18-6.

**B. SUMMARY OF RULE:**

This rule establishes and adopts emission standards for the treatment, storage and disposal of hazardous waste promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279, as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards. Any person who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste Management System, the codified federal emission standards, and this rule.

45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

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

Promulgation of this rule will enable the Department of Environmental Protection to continue to be the primary enforcement authority for the RCRA Hazardous Waste Management System in West Virginia. Revisions to this rule are necessary to maintain consistency with current federal regulations, the Office of Waste Management's Hazardous Waste Management System rule 33CSR20, and to fulfill the State's responsibilities under the CAA. Revisions to the rule include annual incorporation by reference updates.

This revised rule incorporates by reference the following provisions of 40 CFR Parts 260, 261, 264, 265, 266 and 270 promulgated as of June 1, 2008: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments.

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

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division 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 W.Va. Code §§22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

At its June 24, 2008 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. (See attached minutes for Council's discussion).

West Virginia Department of Environmental Protection

**ADVISORY COUNCIL MEETING MINUTES**

Tuesday, June 24, 2008

601 57<sup>th</sup> Street, SE, Charleston, WV

West Virginia Room – 3<sup>rd</sup> Floor

**IN ATTENDANCE:**

***Members of the Council:***

Jackie Hallinan  
Karen Price  
Bill Raney  
Rick Roberts

***DEP:***

Randy Huffman	Cabinet Secretary
Lisa McClung	Deputy Cabinet Secretary and Director, Division of Water and Waste Management
Raymond Franks II	General Counsel
Karen Watson	Associate General Counsel
Kathy Cosco	Communications Director
Pam Nixon	Environmental Advocate
Ken Politan	Mining & Reclamation
Lewis Halstead	Mining & Reclamation
Charlie Sturey	Mining & Reclamation
Carroll Cather	Water & Waste Management
Don Martin	Land Restoration
Brian Long	Water & Waste Management
Dan Arnold	Water & Waste Management
Mike Zeto	Environmental Enforcement
Terrie Sangid	Water & Waste Management
Jim Mason	Air Quality
Mike Johnson	Water & Waste Management
Kathy Emery	Water & Waste Management
Scott Mandirola	Water & Waste Management

***Visitors:***

Tom Boggs	Chamber of Commerce
Don Garvin	WV Environmental Council
Ruth Lemmon	WV Auto/Truck Dealers Association

## **OLD BUSINESS:**

Secretary Huffman called the meeting to order at 1:35 p.m., and he announced that Members Lisa Dooley and Larry Harris would not be attending. On motion made by Mr. Raney and seconded by Ms. Hallinan, the Council approved the minutes from the March 18, 2008 meeting. Secretary Huffman then ceded the floor to Mr. Franks.

## **NEW BUSINESS:**

Mr. Franks noted that for the 2009 regular legislative session, DEP was proposing changes to 20 rules, grouped by Division for presentation to the Council. Depending on who had shepherded the rule through its initial drafting, either Mr. Franks or Ms. Watson would lead the discussion, with program administrators available to assist in answering the Council's questions.

Ms. Watson presented 60 CSR 3, the "Brownfields" Rule. Ms. Watson explained that the Rule was currently pending before the Secretary of State for authorization as an emergency rule, and that the proposed changes included adjustments to the "de minimis" table and enhancing DEP's flexibility in obtaining risk assessments.

Ms. Price referred to a letter recently sent to DEP seeking clarification of the Rule's provisions concerning land use covenants and long-term maintenance agreements. Secretary Huffman stated that the letter would be retrieved and the issue noted for further consideration by the agency.

Mr. Raney inquired whether the Council could recommend changes to the rules as presented. Ms. Watson responded in the affirmative. Mr. Raney then asked whether written comments, such as those submitted by Mr. Harris prior to the meeting, would be appended to the minutes. Mr. Franks responded in the negative, and Ms. Watson expounded that Mr. Harris's comments would be summarized and addressed orally during the discussion of the particular rules involved.

Mr. Franks then presented 38 CSR 2, the Surface Mining Reclamation Rule. Mr. Franks explained that the proposed changes would expand the Secretary's oversight of "approved persons" authorized to render technical certifications contained within mining permit applications, and would clarify certain collateral activities as being within the scope of requests for incidental boundary revisions to existing permits. Mr. Franks also noted that the proposed Rule would set forth more relevant and exacting criteria for the Secretary to consider in evaluating applications for revisions.

Mr. Raney inquired generally about the provisions with respect to approved persons. Secretary Huffman replied that the increased oversight is necessary to improve the initial quality of the permit applications, such that the delays occasioned by subsequent corrections would be reduced or eliminated. Mr. Raney asked whether approved persons could include anyone other than engineers, and Mr. Halstead responded that the definition extended to surveyors and geologists. Mr. Raney noted the need to establish a procedure for suspension or revocation to limit the agency's unfettered discretion, to which Secretary Huffman and Mr. Franks replied that the Rule provided for notice and hearing prior to curtailing the privileges of anyone on the approved-person list.

Ms. Watson presented 47 CSR 30, establishing NPDES requirements for coal mining facilities. Ms. Watson explained that the proposed changes were relatively minor, designed to enhance consistency with the non-coal rule, to allow for digital signatures, and to permit correction of clerical errors.

The Council then considered the Air Quality rules. Mr. Franks presented 45 CSR 1 and 45 CSR 26, relating to control and reduction of nitrogen oxides from, respectively, non-electric and electric generating units, the latter by means of a budget trading program. The rules are to be repealed in their entireties, and Mr. Mason explained that both are being subsumed within the Clean Air Interstate Rule program.

Mr. Franks then presented 45 CSR 8, the Ambient Air Quality Rule. Mr. Franks explained that the 1-hour primary and secondary ozone standards were being replaced with 8-hour standards, with the maximum tolerance being reduced slightly. Mr. Raney inquired as to the practical effect of the proposed change, particularly with regard to whether non-compliance areas within the State might be expanded. Mr. Mason replied that an expansion might occur, but that it was difficult to predict at this early stage. Mr. Mason added that the time-period increase would inevitably lead to more accurate measurements.

Ms. Watson presented 45 CSR 13, governing permits for constructing and modifying non-major stationary sources of air pollutants. Ms. Watson explained that the Rule was being amended to reflect the recent statutory changes reducing the lag time for issuing permits and authorizing certain pre-permit construction. It was noted that Mr. Harris had submitted in writing his concern that courts would be loath to enforce agency cease-and-desist orders based on defects discovered during the permitting process after construction had already begun. Ms. Watson pointed out that the statute had been carefully crafted to avoid facile invocation of detrimental reliance, with Mr. Franks observing that the Rule strove to conform to the statute. Ms. Price wondered whether one or more of the timeframe provisions included within the existing Rule had been inadvertently omitted from the proposed version. Ms. Watson responded that the Rule had been carefully checked for completeness, but that she would once again verify the language to assure its accuracy.

Mr. Franks presented 45 CSR 14, governing permits for constructing and significantly modifying major stationary sources of air pollutants. Mr. Franks explained that references to pollution control projects and clean units were deleted in accordance with a federal appellate court decision vacating those provisions.

Mr. Franks went on to present 45 CSR 16, 45 CSR 25, and 45 CSR 34, relating respectively to performance standards for new stationary sources, pollution from hazardous waste treatment, storage, and disposal facilities, and emission standards for hazardous air pollutants. Mr. Mason noted that the changes incorporate revisions to the Rules' federal counterparts, except that some of the new standards were not incorporated within 45 CSR 34, because they constituted unfunded mandates. Mr. Garvin was recognized, and he asked whether the failure to incorporate equated to a lack of regulation. Mr. Mason responded in the negative, explaining that the monitoring and regulation would be performed by the federal government. Mr. Garvin inquired as to the affected industries, and Mr. Mason referred to a list including smaller gas facilities and paint-stripping shops.

Ms. Watson presented 45 CSR 37, detailing the budget trading program to reduce mercury emissions. Ms. Watson explained that the rule is being repealed as inconsistent with a federal appellate court decision, pending alternative action by the EPA. Mr. Garvin inquired whether the Rule repealed two years ago would be reinstated upon revocation of the current version, to which Ms. Watson and Mr. Franks replied that it would not, if there had indeed been a previous rule in place, which was somewhat in question. Mr. Mason explained that mercury emissions would be monitored and regulated as usual, except that budget trading would not be available as a method of reduction. He also stated that there have been discussions on a national level as to whether to reinstate the federal mercury monitoring requirements.

The Council then turned its attention to the Water and Waste Management Rules. Ms. Watson presented 33 CSR 20, governing hazardous waste management systems. Ms. Watson explained that the Rule incorporated by reference its federal counterpart, the most salient change to which is its attempt to reduce disposal by permitting facilities to stage hazardous waste for three days pending recycling. Mr. Raney asked whether three days was sufficient time, and Mr. Cather responded in the affirmative.

Mr. Franks presented 33 CSR 24, the Hazardous Waste Management Fee Rule. Mr. Franks explained that increases to the fee assessments are necessary to sustain the underlying Fund by ensuring sufficient matching revenue for federal grants. Ms. Price indicated her belief that, as part of the legislative compromise extending the fee's duration, no increases would be forthcoming until completion and review of the Fund's legislative audit. Secretary Huffman responded that the preliminary audit findings in no way indicate any misallocation within the Fund or contravene the agency's determination that fee increases are necessary. Ms. Lemmon was recognized, and she commented that the proposed increase was unfair to automobile and truck dealers, as well as other small generators. Ms. Lemmon suggested that a study be done to identify the industries causing DEP to incur program costs, with fee assessments to be made proportionately.

Ms. Watson presented 33 CSR 22 and 47 CSR 56, governing the assessment of civil administrative penalties for, respectively, hazardous and solid waste violations and violations relating to groundwater. Ms. Watson explained that the Rules were being modified for the first time since their initial promulgation, with the purpose of clarifying their application by listing additional factors to be considered in calculating penalties, providing ratings examples, and expanding facility categories.

Ms. Watson then presented 47 CSR 31, addressing the State Water Pollution Control Revolving Fund. Ms. Watson explained that the proposed changes include the creation of a state review process for sewer projects in lieu of a wholesale adoption of the federal requirements. Mr. Roberts observed that many of the eligibility criteria would be deleted, but Ms. Emery assured the Council that inasmuch as the criteria were not being uniformly met, the deletion would have no practical effect on the Fund's administration. Ms. Watson advised Mr. Roberts that if he continued to have concerns upon further review, he should submit written suggestions for changes during the formal comment period.

Mr. Franks presented 47 CSR 32, governing the certification of laboratories conducting analyses of waste and wastewater. Mr. Franks explained that the proposed changes are designed to modernize outdated procedures and protocols that have remained constant since 1995, and to increase program funding through increased certification fees and a new application fee. Mr. Raney asked whether the new fees would render the program self-sustaining, and Mr. Arnold replied that it would for the time-being. In response to further inquiry, Mr. Arnold stated that DEP conducts annual, on-site audits of commercial and industrial labs, with municipal labs typically audited every two years, depending on the experience of the support personnel.

Ms. Watson presented 47 CSR 34, the Dam Safety Rule. Ms. Watson explained that the Rule is being extensively augmented to govern disbursement and use of a new Revolving Fund to finance repair and rehabilitation of deficient dams. Secretary Huffman commented that it appeared imminent that the Legislature would approve a transfer of \$350,000 from excess general revenue as seed money for the Fund.

Lastly, Ms. Watson presented 47 CSR 2, the Water Quality Standards Rule. Ms. Watson explained that the proposed revisions are designed to clarify the definition of Category A use, while providing specific standards to be applied in the permitting process to determine in a more streamlined fashion whether the use is unsuitable in cases of insufficient flow and hydrologic modification. Mr. Raney commented that the Category A determination process has always been a significant problem for the coal industry. Ms. Price also agreed for her members. Mr. Garvin noted that the environmental community had expressed some initial concern regarding the proposed streamlining mechanisms, but that there was some general support for taking the matter out of the legislative arena. Mr. Huffman affirmed that the revisions are designed solely for the benefit of the regulated public and that the revisions must include the clarification that Category A applies statewide.

Ms. Watson reported that the rules will proceed to be filed with the Secretary of State, some perhaps as early as the week following the Council meeting, and that some will have an extended 45-day comment period.

Mr. Franks requested closing comments from Council members and from the public. Following the cessation of discussion, Mr. Franks reminded the Council that the next meeting is scheduled for 1:30 p.m. on September 9, 2008.

Secretary Huffman declared the meeting adjourned at 3:25 p.m.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 45CSR25 - "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities"

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Division of Air Quality

Address: 601 57<sup>th</sup> Street SE  
Charleston, WV 25304

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE 7/11/08  
ADMINISTRATIVE LAW DIVISION

Phone Number: 926-0475

Email: tmowrer@wvdep.org

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact above that resulting from currently applicable federal emission standards.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

**FISCAL YEAR**

Effect of Proposal	2009 Increase/Decrease (use "-")	2010 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

Rule Title: 45CSR25 - "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities"

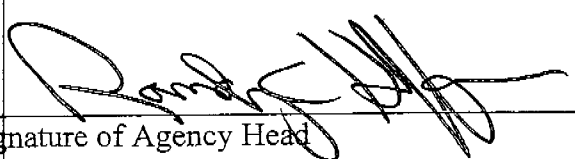
3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

The above estimates reflect that there will be no anticipated changes in costs to administer this rule.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 7/11/08

  
Signature of Agency Head

2008 AUG 29 AM 11:04

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

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 25  
CONTROL OF AIR POLLUTION FROM HAZARDOUS WASTE  
TREATMENT, STORAGE AND DISPOSAL FACILITIES

**§45-25-1. General.**

1.1. Scope.

1.1.a. This rule establishes and adopts a program of regulation over air emissions and emission standards for the treatment, storage and disposal of hazardous waste promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in the 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279 as listed in Table 25-A. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

1.1.b. The purpose of this rule is to achieve and maintain such levels of air quality that will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous waste. Further, all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such any hazardous waste or constituent thereof in such quantities as to cause ambient air concentrations which may be injurious to human health or welfare which would interfere with the enjoyment of life or property.

1.1.c. Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonement of any emission which is released in any locality in a manner or amount as to cause or contribute to statutory air pollution. Neither does it exempt nor excuse any person from complying with other applicable laws, ordinances, regulations, or orders of governmental entities having jurisdiction over hazardous waste treatment, storage or disposal facilities.

1.1.d. This rule is promulgated pursuant to W.Va. Code §§22-18-1 et seq., and 22-5-1 et seq. Recognizing that each article has its own enforcement sections, it is the intent of the Secretary that enforcement shall be implemented in accordance with W.Va. Code §22-18-1 et seq., where practicable.

1.1.e. Permit applications shall be processed in accordance with the permitting procedures as set forth in W.Va. Code §22-18-1 et seq., 33CSR20, and this rule.

1.2. Authority. -- W.Va. Code §§22-5-4 and 22-18-1 et seq.

1.3. Filing Date. -- ~~April 23, 2008.~~

1.4. Effective Date. -- ~~June 1, 2008.~~

1.5. Incorporation By Reference.

1.5.a. Federal Counterpart Regulation. The Secretary has determined that a federal

counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference the provisions contained in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279 as listed in Table 25-A, effective ~~June 1, 2007~~ June 1, 2008.

1.5.b. This rule incorporates by reference the provisions contained in 33CSR20, "Hazardous Waste Management System" that are in effect on the date this rule becomes effective, except for any provision in 33CSR20 which incorporates by reference the Code of Federal Regulations.

1.6. Former Rules. -- This legislative rule amends 45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal" which was filed ~~April 28, 2006~~ April 23, 2008, and which became effective ~~June 1, 2006~~ June 1, 2008.

#### **§45-25-2. Definitions.**

2.1. "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

2.2. "Air Pollution", "statutory air pollution" has the meaning ascribed to it in W.Va. Code §22-5-2.

2.3. "Air Pollution Control Equipment" means any equipment used for collecting or converting hazardous waste emissions for the purpose of preventing or reducing emissions of these materials into the open air from hazardous waste treatment, storage, or disposal facilities.

2.4. "Best Available Control Technology" or "BACT", means an emission standard based on the maximum degree of reduction for each pollutant which would be emitted from any hazardous waste treatment, storage or disposal facility which the Secretary, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines

is achievable for the facility through application of production processes or available methods, systems, or techniques. If the Secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. The standard shall, to the extent possible, set forth the emission reduction achievable by implementation of the design, equipment, work practice or operational standard, and shall provide for compliance by means which achieve equivalent results.

2.5. "CAA" means the federal Clean Air Act, as amended; 42 U.S.C. §7401 et seq.

2.6. "CFR" means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

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

2.8. "Department of Environmental Protection" or "DEP" means that Department of the West Virginia Department of Environmental Protection which is created by the provisions of W.Va. Code §22-1-1 et seq.

2.9. "Facility mailing list" means the mailing list for a facility maintained by U.S. EPA in accordance with 40 CFR §124.10(c)(1)(ix).

2.10. "Hazardous waste" means a hazardous waste as defined in 40 CFR §261.3.

2.11. "Infectious Medical Waste" shall have the meaning ascribed to it in 64CSR56 "Infectious

Medical Waste”, (July 1, 1999), promulgated by the West Virginia Division of Health.

2.12. “Particulate Matter” means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.13. “Pathological Waste ” means waste material consisting of only human or animal remains, anatomical parts or tissue, the bags or containers used to collect and transport the waste material, and animal bedding (if applicable).

2.14. “RCRA” means the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended; 42 U.S.C. §6901 et seq.

2.15. “RCRA Permit” means “West Virginia hazardous waste permit”. The following additional requirements shall apply to obtain a hazardous waste management permit in West Virginia. All references in 40 CFR Part 270 to 40 CFR Part 124 shall be deemed to be references to the applicable provisions of subsections 5.1 through 5.14. To the extent of any inconsistency with 40 CFR Part 270, the specific provisions contained herein shall govern.

2.16. “Secretary” means the Secretary of the West Virginia Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.17. “Steady State” means that all conditions at all points in the thermal treatment process are in stable, normal operating conditions.

2.18. “U.S. EPA” means the United States Environmental Protection Agency.

2.19. Other words or phrases not herein defined and used in this rule shall have the meaning as ascribed in W.Va. Code §§22-5-1 et seq., or 22-18-1 et seq., or 33CSR20 “Hazardous Waste Management System” governing the State

Hazardous Waste Management Act.

### **§45-25-3. Adoption of Standards.**

3.1. The Secretary hereby adopts and incorporates by reference the definitions, lists, tables, appendices, conditions, or requirements from 33CSR20 “Hazardous Waste Management Rule”, effective ~~June 1, 2007~~ June 1, 2008, except for any provisions in 33CSR20 which incorporate by reference the Code of Federal Regulations. In case of a conflict between the Division of Air Quality and the Division of Water and Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Secretary has final administrative authority to resolve the conflict.

3.2. Unless otherwise indicated, the Secretary hereby adopts and incorporates by reference the provisions contained in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279 as listed in Table 25-A, effective ~~June 1, 2007~~ June 1, 2008, with the following modifications:

3.2.a. Whenever the term “United States” is used, it shall also mean the State of West Virginia;

3.2.b. Whenever the terms “Administrator,” “Regional Administrator,” “Assistant Administrator for Solid Waste and Emergency Response” or “Secretary” are used, the term means the Secretary of the West Virginia Department of Environmental Protection;

3.2.c. Whenever the term “Environmental Protection Agency” is used the term also means the West Virginia Department of Environmental Protection; and

3.2.d. The distance provisions of 40 CFR §265.382 apply only to the open burning or open detonation of military explosives in a manner that presents an uncontrolled fragment release hazard. The applicable distance provisions of the American Table of Distances for Commercial

Explosives, effective June 19, 1991, and of the Department of Defense Contractors Safety Manual for Ammunition and Explosives (DOD 4145.26-M), as amended April 11, 1988, apply otherwise.

#### §45-25-4. Requirements.

4.1. Owners and operators of hazardous waste treatment, storage, and disposal facilities regulated by the provisions of this rule shall maintain a list of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the Secretary, where appropriate:

4.1.a. Hazardous Waste Management Program under RCRA and 33CSR20;

4.1.b. Prevention of Significant Deterioration (PSD) Program under 45CSR14 or the CAA;

4.1.c. Nonattainment program under 45CSR19 or the CAA;

4.1.d. National Emission Standards for Hazardous Air Pollutants (NESHAP) preconstruction approval under 45CSR34 or the CAA;

4.1.e. Standards of Performance for New Stationary Sources under 45CSR16 or the CAA; and

4.1.f. Other relevant air pollution control permits including local permits.

4.2. Owners and operators of hazardous waste treatment, storage and disposal facilities covered under this rule must comply with the personnel training requirements as specified by 40 CFR §264.16. An outline of the training program and a description of how the training program is designed to meet actual job tasks must be submitted to the Secretary with Part B of the

permit application.

4.3. Owners and operators of hazardous waste tanks, containers, surface impoundments, landfills, waste piles, land treatment, miscellaneous units, thermal treatment units, incinerators, and boiler and industrial furnace facilities must design, construct, maintain, and operate these facilities to minimize the possibility of a fire, explosion, or any unplanned, sudden, or non-sudden release of hazardous waste constituents to the air which could threaten human health or the environment.

4.4. Owners and operators of hazardous waste management facilities that treat, store, or dispose of ignitable or reactive wastes, or mix incompatible waste or incompatible wastes and other materials, must prevent reactions which:

4.4.a. Produce uncontrolled toxic mists, fumes, dust or gases in sufficient quantities to threaten human health or the environment, and

4.4.b. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion.

4.5. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a container in accordance with the applicable air emission requirements as listed in Table 25-A.

4.6. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a tank in accordance with the applicable air emission requirements as listed in Table 25-A.

4.7. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable air emission requirements as listed in Table 25-A.

4.8. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a miscellaneous unit in accordance with the applicable air pollution standard requirements of 40 CFR 264 including but not limited to subparts AA, BB, and CC.

4.9. A hazardous waste pile must be fully enclosed or otherwise designed to prevent dispersal of the waste by wind.

4.10. Hazardous waste landfills must be covered or otherwise managed to prevent wind dispersal of the waste.

4.11. All landfills, surface impoundments, and land treatment facilities shall be located, designed, constructed, operated, maintained, and closed in a manner that will assure protection of human health and the environment. Protection of human health and the environment shall include prevention of adverse effects on air quality considering:

4.11.a. The volume and physical and chemical characteristics of the waste in the facility, including its potential for volatilization and wind dispersal;

4.11.b. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

4.11.c. The potential for health risks caused by human exposure to waste constituents;

4.11.d. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

4.11.e. The potential for interference with the enjoyment of life or property; and

4.11.f. The persistence and permanence of the potential adverse effects.

4.12. Owners and operators of hazardous waste treatment, storage, or disposal facilities shall utilize best available control technology ("BACT") to limit the discharge of hazardous waste constituents to the atmosphere during:

4.12.a. Process turn-arounds;

4.12.b. Cleaning of process equipment;

4.12.c. Planned process shutdowns; and

4.12.d. Tank truck, railroad tank car, and barge cleaning.

4.13. The Secretary may, on a case-by-case basis, establish performance standards for hazardous waste incinerators for control of emissions of metals, hydrogen halides, and elemental halogen, based on a finding that the standards are necessary to limit the emission rates of these constituents to levels which do not pose an unacceptable risk to human health and environment. The Secretary may require the following data from the permit applicant:

4.13.a. Emissions of POHCs, hazardous combustion by-products, metals and hydrogen halides, including:

4.13.a.1. Mass emission rates from the stack, and

4.13.a.2. Concentration in the gas stream exiting the stack; and

4.13.b. Air dispersion estimates for those substances, including:

4.13.b.1. Meteorological data, and

4.13.b.2. Description of the air dispersion models, and

4.13.b.3. Assumptions underlying the air dispersion models used; and

45CSR25

4.13.c. Expected human and environmental exposure, including:

4.13.c.1. Topographic considerations,

4.13.c.2. Population distributions,

4.13.c.3. Population activities, and

4.13.c.4. Modes, intensity, and duration of exposure; and

4.13.d. Consequences of exposure, including:

4.13.d.1. Dose-response curves for carcinogens,

4.13.d.2. Health effects based on human or animal studies for other toxic constituents,

4.13.d.3. Potential for accumulation of toxic constituents in the human body, and

4.13.d.4. Statements of expected risk to individuals or populations.

4.14. Emergency Permit. -- Notwithstanding any other provision in 40 CFR §270.61, in the event the Secretary finds an imminent and substantial danger to human health or the environment, the Secretary may issue a temporary permit to a facility to allow treatment, storage, or disposal of hazardous waste at a non-permitted facility, or hazardous waste not covered by the permit for a facility with an effective permit. This emergency permit:

4.14.a. May be oral or written. If oral, it shall be followed within five (5) days by written emergency permit;

4.14.b. Shall not exceed ninety (90) days in duration;

4.14.c. Shall clearly specify the hazardous wastes to be received, and the manner

and location of the treatment, storage, or disposal;

4.14.d. May be terminated by the Secretary at any time without prior notice if it is determined that termination is appropriate to protect human health or the environment; and

4.14.e. Shall be accompanied by public notice as described under section 7 and include the following:

4.14.e.1. Name and address of the office granting the emergency authorization,

4.14.e.2. Name and location of the permitted hazardous waste management facility,

4.14.e.3. A brief description of the wastes involved,

4.14.e.4. A brief description of the action authorized and reasons for authorizing it,

4.14.e.5. Duration of the emergency permit; and

4.14.f. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this rule.

4.15. Pathological Waste Incinerators. -- The owner and operator of a pathological waste incinerator is not subject to the requirements of this rule unless the incinerator is charged with any mixture of infectious medical waste and hazardous waste listed in 40 CFR 261 Subpart D. The owner and operator of a pathological waste incinerator shall design, construct and operate the facility in accordance with all applicable rules promulgated by the Secretary including, but not limited to, this rule, 45CSR6, 45CSR13, 45CSR14, 45CSR18, 45CSR19, 45CSR30 and 45CSR34, as applicable.

**§45-25-5. Permit Process.**

5.1. Pre-application Public Meeting and

## Notice

5.1.a. Applicability. -- The requirements of subsection 5.1 shall apply to West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. These requirements shall also apply to West Virginia hazardous waste management Part B permit applications seeking renewal of permits for hazardous waste management units, where the renewal application is proposing a significant change in facility operations. A "significant change" is any change that would qualify as a Class 3 permit modification pursuant to 40 CFR §270.42. These requirements do not apply to permit modifications under 40 CFR §270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.1.b. Prior to the submission of a West Virginia hazardous waste management Part B permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

5.1.c. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subdivision 5.1.b, and copies of any written comments or materials submitted at the meeting, to the Secretary as a part of the Part B application, in accordance with 40 CFR §270.14(b).

5.1.d. The applicant must provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant must maintain, and provide to the Secretary upon request, documentation of the notice.

5.1.d.1. The applicant shall provide public

notice in all of the following forms:

5.1.d.1.A. A newspaper advertisement. -- The applicant shall publish a notice, fulfilling the requirements in paragraph 5.1.d.2, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Secretary shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Secretary determines that the publication is necessary to inform the affected public. The notice must be published as a display advertisement;

5.1.d.1.B. A visible and accessible sign. -- The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph 5.1.d.2. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site;

5.1.d.1.C. A broadcast media announcement. -- The applicant shall broadcast a notice, fulfilling the requirements in paragraph 5.1.d.2, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Secretary; and

5.1.d.1.D. A notice to the permitting agency. -- The applicant shall send a copy of the newspaper notice to the Secretary and the Secretary shall forward copies to the appropriate units of State and local government having jurisdiction over the area where the facility is, or is proposed to be, located; and to each state agency having any authority under State law with respect to the construction or operation of the facility.

5.1.d.2. The notices required under paragraph 5.1.d.1 must include:

5.1.d.2.A. The date, time, and location of the meeting;

5.1.d.2.B. A brief description of the purpose of the meeting;

5.1.d.2.C. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

5.1.d.2.D. A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

5.1.d.2.E. The name, address, and telephone number of a contact person for the applicant.

## 5.2. Public Notice Requirements at the Application Stage.

5.2.a. Applicability. -- The requirements of subsection 5.2 shall apply to all West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. These requirements shall also apply to hazardous waste management Part B permit applications seeking renewal of permits for hazardous waste management units upon the expiration of the existing permit. These requirements do not apply to permit modifications under 40 CFR §270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.2.b. Notification at application submittal. -- The Secretary shall provide public notice as required in subsection 5.2 when a Part B permit application has been submitted. The Secretary shall provide public notice to:

5.2.b.1. The applicant;

5.2.b.2. All persons on a mailing list

developed under subparagraph 5.8.d.1.D;

5.2.b.3. The appropriate units of state and local government having jurisdiction over the area where the facility is proposed to be located; and to each state agency having any authority under State law with respect to the construction or operation of the facility, that a Part B permit application has been submitted to the Secretary and is available for review; and

5.2.b.4. Any person otherwise entitled to receive notice under subdivision 5.2.b may waive the right to receive notice for any classes and categories of permits.

5.2.c. The notice shall be published within a reasonable period of time after the application is received by the Secretary. The notice must include:

5.2.c.1. The name and telephone number of the applicant's contact person;

5.2.c.2. The name and telephone number of the Secretary's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

5.2.c.3. An address to which people can write in order to be put on the facility mailing list;

5.2.c.4. The location where copies of the permit application and any supporting documents can be viewed and copied;

5.2.c.5. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

5.2.c.6. The date that the application was submitted.

5.2.d. Concurrent with the notice required

under subdivision 5.2.b, the Secretary must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the Secretary's office.

### 5.3. Information Repository.

5.3.a. Applicability. -- The following requirements apply to all applicants seeking West Virginia hazardous waste management permits for hazardous waste management units.

5.3.b. The Secretary may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Secretary shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Secretary determines, at any time after submittal of a permit application, that there is a need for a repository, then the Secretary shall notify the facility that it must establish and maintain an information repository.

5.3.c. The information repository shall contain all documents, reports, data, and information deemed necessary by the Secretary to fulfill the purposes for which the repository is established. The Secretary shall have the discretion to limit the contents of the repository.

5.3.d. The information repository shall be located and maintained at a site chosen by the facility. If the Secretary finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Secretary shall specify a more appropriate site.

5.3.e. The Secretary shall specify requirements for informing the public about the information repository. At a minimum, the Secretary shall require the facility to provide a

written notice about the information repository to all individuals on the facility mailing list.

5.3.f. The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Secretary. The Secretary may close the repository at his or her discretion, based on the factors in subdivision 5.3.b.

### 5.4. Application for a Permit.

5.4.a. Any person who requires a permit shall complete, sign, and submit to the Secretary an appropriate application. Applications are not required for hazardous waste permits by rule pursuant to 40 CFR §270.60. The Secretary shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. Permit applications must comply with the signature and certification requirements of 40 CFR §270.11.

5.4.b. The Secretary shall review every application for completeness. Each application submitted by a new hazardous waste management facility, should be reviewed for completeness by the Secretary within 30 days of its receipt. Each application submitted by an existing hazardous waste management facility (both Part A and Part B of the application), should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Secretary shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Secretary may request additional information from the applicant but only when necessary to clarify, modify or supplement

previously submitted materials. The request for additional information will not render an application incomplete.

5.4.c. If the applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provisions of W.Va. Code §§22-18-1 et seq. and 22-5-1 et seq.

5.4.d. If the Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

5.4.e. The effective date of an application is the date on which the Secretary notifies the applicant that the application is complete as provided for in subdivision 5.4.b.

5.4.f. For each application the Secretary shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Secretary intends to:

5.4.f.1. Prepare a draft permit;

5.4.f.2. Give public notice;

5.4.f.3. Complete the public comment period, including any public hearing; and

5.4.f.4. Issue a final permit.

5.5. Modification, Revocation and Reissuance, or Termination of Permits.

5.5.a. Permits may be modified, revoked and reissued, or terminated either at the request of an interested person (including the permittee) or upon the Secretary's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR

§§270.41 or 270.43. All requests shall be in writing and contain facts or reasons supporting the request.

5.5.b. If the Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Secretary may be appealed to the Air Quality Board in accordance with W.Va. Code §22B-1-1 et seq.

5.5.b.1. If the Secretary tentatively decides to modify or revoke and reissue a permit under 40 CFR §§270.41 or 270.42(c), he or she shall prepare a draft permit under subsection 5.6 incorporating the proposed changes. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the Secretary shall require the submission of a new application.

5.5.b.2. In a permit modification, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

5.5.b.3. "Classes 1 and 2 Modifications" as defined in 40 CFR §§270.42(a) and (b) are not subject to the requirements of this subsection.

5.5.c. If the Secretary tentatively decides to terminate a permit under 40 CFR §270.43, he or she shall issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit which follows the same procedures as any

draft permit prepared under subsection 5.6.

#### 5.6. Draft Permits.

5.6.a. Once an application is complete, the Secretary shall tentatively decide whether to prepare a draft permit or to deny the application.

5.6.b. If the Secretary tentatively decides to deny the permit application, he or she shall issue a Notice of Intent to Deny. A Notice of Intent to Deny the permit application is a type of draft permit which follows the same procedures as a draft permit. If the Secretary's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the Notice of Intent to Deny and proceed to prepare a draft permit.

5.6.c. If the Secretary tentatively decides to issue a permit, he or she shall prepare a draft permit that contains the following information:

5.6.c.1. All conditions under 40 CFR §§270.30 and 270.32;

5.6.c.2. All compliance schedules under 40 CFR §270.33;

5.6.c.3. All monitoring requirements under 40 CFR §270.31; and

5.6.c.4. Standards for treatment, storage, disposal and other permit conditions under 40 CFR §270.30.

5.6.d. All draft permits prepared by the Secretary shall be accompanied by a fact sheet if required under subdivision 5.7.a and shall be based on the administrative record, publicly noticed and made available for public comment.

5.6.e. In addition to the requirements of subsection 5.6, public notice of the preparation of a draft permit shall be given by the methods contained in 40 CFR §§270.2, 270.14, 270.30, 270.62, and 270.66.

#### 5.7. Fact Sheet.

5.7.a. A fact sheet shall be prepared for each draft permit which the Secretary finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, and methodological and policy questions considered in preparing the draft permit. The Secretary shall send the fact sheet to the applicant and, on request, to any other person.

5.7.b. The fact sheet shall include when applicable:

5.7.b.1. A brief description of the type of facility or activity which is the subject of the draft permit;

5.7.b.2. The type and quantity of waste, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

5.7.b.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

5.7.b.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5.7.b.5. A description for reaching a final decision on a draft permit including;

5.7.b.5.A. The beginning and the ending dates of the comment period and the address where comments will be received;

5.7.b.5.B. Procedures for requesting a hearing and the nature of that hearing; and

5.7.b.5.C. Any other procedures by which the public may participate in the final decision; and

5.7.b.6. Name and telephone number of a person to contact for additional information.

#### 5.8. Public Notice of Permit Actions and Public Comment Period.

5.8.a. Scope. The Secretary shall give public notice if the following actions have occurred:

5.8.a.1. A draft permit has been prepared; and

5.8.a.2. A hearing has been scheduled.

5.8.b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under subsection 5.5. Written notice of that denial shall be given to the requester and to the permittee.

5.8.c. Timing. -- Public notice of the preparation of a draft permit, including a Notice of Intent to Deny a Permit Application, required under subdivision 5.8.a shall allow at least forty-five (45) days for public comment. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

5.8.d. Methods. -- Public notice of activities described in subdivision 5.8.a shall be provided by the following methods:

5.8.d.1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

5.8.d.1.A. The applicant;

5.8.d.1.B. Any other agency which the Secretary knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under

the Clean Air Act), W.Va. Code §22-5-1 et. seq., NPDES, 33 U.S.C. §1344, or sludge management permit for the same facility or activity;

5.8.d.1.C. Federal and state agencies with jurisdiction over fish, shell fish and wildlife resources and over coastal zones management plans, the advisory council on historic preservation, and the state historic preservation office, as applicable;

5.8.d.1.D. Persons on a mailing list developed by:

5.8.d.1.D.i. Including those who request in writing to be on the list;

5.8.d.1.D.ii. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

5.8.d.1.D.iii. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in regional and state funded newsletters, environmental bulletins, or state law journals. The Secretary may update the mailing lists from time to time by requesting written indications of continued interest from those listed. The Secretary may delete from the lists the name of any person who fails to respond to the request;

5.8.d.1.E. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

5.8.d.1.F. To each state agency having any authority under state law with respect to the construction or operation of the facility.

5.8.d.2. Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;

5.8.d.3. In a manner constituting legal notice to the public under state laws; and

5.8.d.4. Any other method reasonably calculated to give actual notice of the action in question to the person potentially affected by it, including press releases or any other forum or medium to elicit public participation.

5.8.e. Public notices. -- All public notices issued shall contain the following minimum information:

5.8.e.1. Name and address of the office processing the permit action for which notice is being given;

5.8.e.2. Name and address of the permittee or the permit applicant and, if different, of the facility or activity regulated by the permit;

5.8.e.3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

5.8.e.4. Name, address and telephone number of a person from who interested persons may obtain further information, including copies of the draft permit and fact sheet and the application;

5.8.e.5. A brief description of the comment procedures required by subsections 5.9 and 5.10 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final decision;

5.8.e.6. The location of the administrative record, the times that which the record shall be open for public inspection; and

5.8.e.7. Any additional information considered necessary or proper.

5.8.f. Public notices for hearings. -- In addition to the general public notice described in

subdivision 5.8.e, the public notice of a hearing shall contain the following information:

5.8.f.1. Reference to the date of previous public notices relating to the permit;

5.8.f.1.A. Date, time, and place of the hearing; and

5.8.f.1.B. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

5.8.g. In addition to the general public notice described in subdivision, all persons identified in subparagraphs 5.8.d.1.A, 5.8.d.1.B, and 5.8.d.1.C shall be mailed a copy of the fact sheet, the permit application and the draft permit, as applicable.

5.9. Public Comments and Requests for Public Hearing. -- During the public comment period provided under subsection 5.8, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subsection 5.13.

5.10. Public Hearings.

5.10.a. The Secretary shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit.

5.10.b. The Secretary may also hold a public hearing at his or her discretion, whenever, for instance, a hearing might clarify one or more issues involved in the permit decision.

5.10.c. The Secretary shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request

for a hearing within forty-five (45) days of public notice under subdivision 5.8.c; whenever possible the Secretary shall schedule a hearing at a location in convenient to the nearest population center to the proposed facility.

5.10.d. Public notice of the hearing shall be given as specified in subsection 5.8.

5.10.e. Whenever a public hearing will be held the Secretary shall designate a presiding officer for the hearings who shall be responsible for its scheduling and orderly conduct.

5.10.f. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under subsection 5.8 shall automatically be extended to the close of any public hearing. The hearing officer may also extend the comment period by so stating at the hearing.

5.10.g. A tape recording or written transcript of the hearing shall be made available to the public.

5.11 Reopening of the Public Comment Period.

5.11.a. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Secretary may take one or more of the following actions:

5.11.a.1. Prepare a new draft permit, appropriately modified, under subsection 5.6;

5.11.a.2. Prepare a revised fact sheet under subsection 5.7 and reopen the comment period; and

5.11.a.3. Reopen or extend the comment period under subsection 5.11 to give

interested persons an opportunity to comment on the information or arguments submitted.

5.11.b. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under subsection 5.8 shall define the scope of the reopening.

5.11.c. Public notice of any of the above actions shall be issued under subsection 5.8.

5.12. Issuance and Effective Date of Permit.

5.12.a. After the close of the public comment period on a draft permit the Secretary shall issue a final permit decision. The Secretary shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice shall include reference to the procedures for appealing a decision on the permit. A final permit decision means a final decision to issue, deny, modify, or revoke and reissue, or terminate a permit.

5.12.b. A final permit decision shall become effective thirty (30) days after the service of Notice of Decision unless:

5.12.b.1. A later effective date is specified in the decision;

5.12.b.2. Review is requested or an evidentiary hearing is requested; or

5.12.b.3. No comments requested change in the draft permit, in which case the permit shall become effective immediately upon issuance.

5.13. Response to Comments.

5.13.a. At the time that any final permit decision is issued, the Secretary shall issue a response to comments. This response shall:

5.13.a.1. Specify which provisions, if

any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

5.13.a.2. Briefly describe and respond to all significant comments on the draft permit or the permit application raised during the public comment period, or during any hearing.

5.13.b. The response to comments shall be available to the public.

#### 5.14. Administrative Record.

5.14.a. The provisions of a draft permit prepared under subsection 5.6 shall be based on the administrative record consisting of:

5.14.a.1. The application and any supporting data furnished by the applicant;

5.14.a.2. The draft permit or notice of intent to deny the application or to terminate the permit;

5.14.a.3. The fact sheet if required;

5.14.a.4. All documents cited in the fact sheet; and

5.14.a.5. Other documents contained in the supporting file for the draft permit.

5.14.b. The Secretary shall base final permit decisions on the administrative record consisting of:

5.14.b.1. Administrative record for the draft permit;

5.14.b.2. All comments received during the public comment period provided under subsection 5.5, including any extension or reopening under subsection 5.11;

5.14.b.3. The tape or transcript of any hearing(s) held under subsection 5.10;

5.14.b.4. Any written material submitted at the hearing;

5.14.b.5. The response to comments required by subsection 5.13 which identified and supports any change made in the draft permit and any new material placed in the record under subsection 5.13;

5.14.b.6. Other documents contained in the supporting file for the permit;

5.14.b.7. An addendum to the fact sheet if needed; and

5.14.b.8. The final permit.

5.14.c. The administrative record shall be complete on the date the final permit is issued.

5.14.d. Material readily available at the issuing agency office or published material that is generally available, and that is included in the administrative record under subdivisions 5.14.a and 5.14.b, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

#### 5.15. Public Access to Information.

5.15.a. Any record, report, or information and any permit, permit application, and related documentation within the Secretary's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the Secretary that the records, reports, permit documentation, or information, or any part hereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the Secretary shall consider, treat, and protect the records as confidential pursuant to W.Va. Code §§22-18-1-et seq. and 22-5-1-et seq.

5.15.b. It shall be the responsibility of the person claiming any information as confidential

45CSR25

under the provision of subdivision 5.15.a to comply with the requirements of 45CSR31.

5.16. The provisions of 40 CFR §270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W.Va. Code, §§22-18-1 et seq. and 22-5-1 et seq.

**§45-25-6. Exclusions and Exemptions.**

6.1. Wastes and materials excluded in 33CSR20, are excluded from the requirements of this rule.

6.2. Except for recyclable materials exempt pursuant to 33CSR§20-3, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of section 4.

6.3. The provisions of 62 Federal Register 52622-52642, dated October 8, 1997 (Project XL Site-Specific Rulemaking for Merck & Co., Inc., Stonewall Plant, Elkton, VA: Final Rule) are hereby excluded. These provisions include 40 CFR §§264.1030(d), 264.1050(g), 264.1080(e), 265.1030(c), 265.1050(f), and 265.1080(e).

6.4. Any pathological waste incinerator not subject to this rule under subsection 4.15 shall be subject to 45CSR6 or 45CSR18, as applicable.

**§45-25-7. Application Fee.**

7.1. Any person who applies for a permit for the construction and/or operation of an air emitting hazardous waste treatment, storage, or disposal facility shall submit as part of the application a money order or cashier's check payable to the "Air Pollution Control Fund" of the State Treasury. The fee shall be determined by the schedule set forth below:

Activity	Fee
a. Hazardous Waste Management Facilities:	

Treatment design capacity more than 1,000 ton/yr.	\$5,000
---	---------

Treatment design capacity less than 1,000 ton/yr	\$5,000
--	---------

b. Class 2, 3 Modifications or Renewals of Permits and 40 CFR §270.41 for Hazardous Waste Management Facilities	\$1,000
---	---------

c. Class 1 Modifications	\$ 500
--------------------------	--------

7.2. These application fees shall be in addition to any fee required under any other rule of the West Virginia Department of Environmental Protection.

**§45-25-8. Inconsistency Between Rules.**

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

## 45CSR25

TABLE 25-A

Item No.	CFR No.	Part No.	Subpart No.	Title
1.	40 CFR	- 264, 265	- O	- Incinerator
2.	40 CFR	- 270.19	- B	- Specific Requirements for Incinerators
		- 270.42	- D	- Permit Modification at the Request of the Permittee
			- Appendix	- Appendix I
3.	40 CFR	- 270.62	- F	- Hazardous Waste Incinerator Permits
4.	40 CFR	- 270.72	- G	- Changes During Interim Status
5.	40 CFR	- 264	- X	- Miscellaneous Units
6.	40 CFR	- 270.23	- B	- Specific Requirements for Miscellaneous Units
7.	40 CFR	- 264, 265	- AA	- Air Emission Standards for Process Vents
8.	40 CFR	- 270.24	- B	- Specific Requirements for for Process Vents
9.	40 CFR	- 264, 265	- BB	- Air Emission Standards for Equipment Leaks
10.	40 CFR	- 270.25	- B	- Specific Requirements for Equipment Leaks
11.	40 CFR	- 264, 265	- CC	- Air Emission Standards
		264.179, 265.178	I	for Tanks, Surface
		264.200, 265.202	J	Impoundments, and Containers
		264.232, 265.231	K	
		265	- Appendix	- Appendix VI
12.	40 CFR	- 270.14(b)(5)	- A	- General Information
13.	40 CFR	- 270.27	- B	- Specific Requirements for Air Emissions Control for Tanks, Surface Impoundments and Containers
14.	40 CFR	- 265	- P	- Thermal Treatment

45CSR25

Item No.	CFR No.	Part No.	Subpart No.	Title
15.	40 CFR	- 266	- H - Appendices	- Hazardous Waste Burned in Boilers and Industrial Furnaces - Appendix 1 to XIII
16.	40 CFR	- 270.22	- B	- Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
17.	40 CFR	- 270.66	- F	- Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
18.	40 CFR	- 279.23	- C	- On-site Burning In Space Heater
19.	40 CFR	- 279	- G	- Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery
20.	40 CFR	- 270.14(b)(22)	- B	- Permit Application
21.	40 CFR	- 270.1(c)(2)(viii)(C)-	A	- General Information
22.	40 CFR	- 270.30(m)	- B	- Information repository
23.	40 CFR	- 261.6(c)(1) 261.4	- A -	- Requirements for Recyclable Materials - Exclusions
24.	40 CFR	- 261.38	- D	- Comparable/Syngas Fuel Exclusion
25.	40 CFR	- 262.34	C	- Accumulation Time
26.	40 CFR	- 260.11	- B	- References
27.	40 CFR	- 264.15(b)(4)	- B	- General Inspection Requirement
28.	40 CFR	- 264.73(b)(6)	- E	- Operating Records
29.	40 CFR	- 270.235	- I	- Options for Incinerators and Cement and Lightweight Aggregate Kilns to Minimize Emissions from Startup, Shutdown, and Malfunction Events.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies and existing LMWC units that are subject to the provisions of 40 CFR part 60, subpart Cb and related subpart Eb. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the section 111(d)/129 plan revision should relevant adverse or critical comments be filed. This rule will be effective June 9, 2008 without further notice unless EPA receives adverse comments by May 8, 2008. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

#### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the 111(d)/129 plan is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *June 9, 2008*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: March 31, 2008.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 40 CFR part 62 is amended as follows:

#### PART 62—[AMENDED]

■ 1. The authority citation for Part 62 continues to read as follows:

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

#### Subpart V—Maryland

■ 2. Section 62.5110 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

##### § 62.5110 Identification of plan.

\* \* \* \* \*

■ (b) On October 24, 2007, Maryland submitted a revised State plan (Phase II) and related COMAR 26.11.08.01, .02, and .08 amendments as required by 40 CFR part 60, subpart Cb, amended May 10, 2006.

■ 3. Section 62.5112 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

##### § 62.5112 Effective date.

\* \* \* \* \*

■ (b) The plan revision (Phase II) is effective June 9, 2008.

[FR Doc. E8-7347 Filed 4-7-08; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 63, 264 and 266

[EPA-HQ-OAR-2004-0022; FRL-8549-4]

RIN 2050-AG35

#### NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing amendments to the national emission standards for hazardous air pollutants (NESHAP) for hazardous waste combustors, which

EPA promulgated on October 12, 2005. The amendments to the October 2005 final rule clarify several compliance and monitoring provisions, and also correct several omissions and typographical errors in the final rule. We are finalizing the amendments to facilitate compliance and improve understanding of the final rule requirements. This rule does not address issues for which petitioners sought reconsideration. Nor does it address issues raised in EPA's comment solicitation of September 27, 2007.

**DATES:** The final rule is effective on April 8, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2004-0022. All documents in the docket are listed on <http://www.regulations.gov> Web site.

Although listed in the index, some information is not publicly available, e.g., confidential business information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA-HQ-OAR-2004-0022, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The HQ EPA Docket Center

telephone number is (202) 566-1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** For more information on this rulemaking, contact Frank Behan at (703) 308-8476, or [behan.frank@epa.gov](mailto:behan.frank@epa.gov), Office of Solid Waste (MC: 5302P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

*Entities Potentially Affected by This Rule.* Categories and entities potentially affected by this rule include:

Category	NAICS code <sup>a</sup>	Potentially affected entities
Petroleum and coal products manufacturing .....	324	Any entity that combusts hazardous waste as defined in the final rule.
Chemical manufacturing .....	325	
Cement and concrete product manufacturing .....	3273	
Other nonmetallic mineral product manufacturing .....	3279	
Waste treatment and disposal .....	5622	
Remediation and other waste management services .....	5629	

<sup>a</sup>North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this rule. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this rule, you should examine the applicability criteria in 40 CFR 63.1200. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*How Do I Obtain a Copy of This Document and Other Related Information?* In addition to being available in the docket, an electronic copy of today's rule will also be available on the on the World Wide Web. Following the Administrator's signature, a copy of this document may be posted at <http://www.epa.gov/hwcmact>. This Web site also provides other information related to the NESHAP for hazardous waste combustors including the NESHAP issued on October 12, 2005 (70 FR 59402).

*Judicial Review.* Under section 307(b)(1) of the Clean Air Act, judicial review of the final action is available only by filing a petition for review in the United States Court of Appeals for

the District of Columbia Circuit by June 9, 2008. Section 307(d)(7)(B) of the CAA provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final action may not be challenged separately in any civil or

criminal proceedings brought by EPA to enforce these requirements.

*Organization of This Document.* The information presented in this preamble is organized as follows:

- I. Background
  - A. What Is the Source of Authority for the Development of NESHAP?
  - B. How Did the Public Participate in Developing the Amendments to the Final Rule?
- II. Summary of the Final Amendments
  - A. Proposed Amendments for Which No Adverse Comments Were Received
  - B. Proposed Amendments for Which Comments Were Received
    - 1. Calculating Rolling Averages
    - 2. Expressing Particulate Matter Standards Using the International System of Units
    - 3. Corrections to the Notice of Intent To Comply (NIC) Provisions for New Units
  - C. Corrections to the Startup, Shutdown, and Malfunction Plan Provisions
  - D. Time Lines
- III. Impacts of the Final Rule
  - A. What facilities are affected by the final amendments?
  - B. What are the impacts of the final rule?
- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review

**I. Background**

*A. What Is the Source of Authority for the Development of NESHP?*

Section 112(c) of the Clean Air Act requires EPA to list categories and subcategories of major sources and area sources of hazardous air pollutants (HAP) and to establish NESHP for the listed source categories and subcategories. Hazardous waste combustors include incinerators, cement kilns, lightweight aggregate kilns, boilers, and hydrochloric acid production furnaces that burn hazardous waste. EPA's initial list of categories of major and area sources of HAP was published on July 16, 1992 (57 FR 31576). Hazardous waste incinerators, Portland cement manufacturing, clay products manufacturing (including lightweight

aggregate kilns), industrial/commercial/institutional boilers and process heaters, and hydrochloric acid production furnaces were among the listed categories of sources. Major sources of HAP are those sources that have the potential to emit at least 10 tons per year of any one HAP or 25 tons per year of any combination of HAP.

*B. How Did the Public Participate in Developing the Amendments to the Final Rule?*

The final rule was published on October 12, 2005 (70 FR 59402) and codified in 40 CFR part 63, subpart EEE. Following publication of the final rule, two industry trade associations identified a number of typographical errors and suggested several potential compliance and monitoring amendments and clarifications to the rule.<sup>1</sup> On September 6, 2006, we published proposed amendments (71 FR at 52639) to address these issues and sought public comment on the proposed amendments.<sup>2</sup> EPA received comments from five entities. Today's action presents EPA's responses to those comments and promulgates amendments to Subpart EEE of 40 CFR part 63.

**II. Summary of the Final Amendments**

In today's notice, we are announcing our final action on several amendments

to Subpart EEE of 40 CFR part 63. The amendments revise several compliance and monitoring provisions in response to questions and issues raised by entities affected by the rule. The revised provisions are effective immediately, and today's final rule does not change the October 14, 2008 compliance date established by the October 12, 2005 final rule. See also Section III (Time Lines for compliance activities) in today's action. Sources can readily comply with the revised provisions promulgated today within the compliance time frames established by the October 12, 2005 final rule. See § 63.1206(a).

*A. Proposed Amendments for Which No Adverse Comments Were Received*

In the September 6, 2006 proposal, we proposed several corrections and clarifications to the NESHP for hazardous waste combustors. 71 FR at 52639–642, 52645–646. We received no adverse comments on the majority of the corrections and clarifications (see Table 1 below). Therefore, we are promulgating those provisions, as proposed, without further discussion.<sup>3</sup> The reader is referred to the September 2006 proposed rule for background on these changes.

TABLE 1.—SUMMARY OF AMENDMENTS FOR WHICH NO ADVERSE COMMENTS WERE RECEIVED

Preamble section in September 2006 proposed rule	Subject of proposed amendment	Code of Federal Register (CFR) section(s) amended
V.A	Sunset Provision for the Interim Standards	63.1203(e), 63.1204(i), 63.1205(e).
V.B	Operating Parameter Limits for Sources with Fabric Filters	63.1206(c)(9).
V.C	Confirmatory Performance Testing Not Required for Sources That Are Not Subject to a Numerical Dioxin/Furan Emission Standard.	63.1207(b)(3)(vi).
V.D	Periodic Performance Test for Phase I Sources	63.1207(d).
V.E	Performance Test Waiver for Sources Subject to Hazardous Waste Thermal Concentration Limits.	63.1207(m).
V.F	Averaging Method When Calculating 12-Hour Rolling Average Thermal Concentration Limits.	63.1209(n)(2)(iii).
V.I	Timing of the Periodic Review of Eligibility for the Health-Based Compliance Alternatives for Total Chlorine.	63.1215(h)(2)(i).
V.K	Mercury Standards for Cement Kilns	63.1220(a)(2) and (b)(2), 63.1209(l)(1)(iii).
V.L	Facilities Operating Under RCRA Interim Status	None. Interpretation of existing regulations (see 71 FR at 52642).
VII.A	Miscellaneous Typographical Errors	63.1206(a)(2) heading, 63.1206(a)(2)(ii)(A), 63.1206(b)(16), 63.1210(b), 63.1215(a)(2), 63.1215(b)(2), 63.1215(b)(3), 63.1215(b)(6)(ii)(C), 63.1215(f)(5)(ii)(A), 63.1217(a)(6)(ii), 63.1217(b)(6)(ii).

<sup>1</sup> See docket items EPA-HQ-OAR-2004-0022-0551 and 0552.

<sup>2</sup> In addition to soliciting comment on the rule amendments discussed in this action, EPA also requested comment on other issues in the September 6, 2006 proposed rule. The other issues related to our response to four petitions for reconsideration that were submitted to the Administrator pursuant to section 307(d)(7)(B) of the Clean Air Act. EPA's final response to the

petitions for reconsideration is not included in today's action. See Sections II, III, and IV of the September 2006 notice for additional information on the reconsideration proceedings. Nor does this final rule address any of the issues raised by EPA's solicitation of comment published on September 27, 2007 (72 FR 54875).

<sup>3</sup> Please note, however, that we have revised proposed § 63.1207(d)(2), which prescribes the schedule for confirmatory performance testing, to

conform with existing § 63.1207(b)(3) to clarify further that confirmatory performance testing is not required for sources that are not subject to a numerical D/F emission standard: solid fuel boilers and hydrochloric acid production furnaces; lightweight aggregate kilns that are not subject to a numerical dioxin/furan emission standard under § 63.1221; and liquid fuel boilers that are not subject to a numerical dioxin/furan emission standard under § 63.1217.

TABLE 1.—SUMMARY OF AMENDMENTS FOR WHICH NO ADVERSE COMMENTS WERE RECEIVED—Continued

Preamble section in September 2006 proposed rule	Subject of proposed amendment	Code of Federal Register (CFR) section(s) amended
VII.B	Citation Corrections	63.1206(b)(14)(iv), 63.1207(g)(2)(i) and (ii), 63.1209(n)(2)(vii), 63.1215(a)(1)(i), 266.100(b)(3), 264.340(b),
VII.C	Corrections to the NIC Provisions for New Units	63.1212(b)(1) and (b)(3).
VII.D	Clarification of the Applicability of Title V Permit Requirements to Phase 2 Area Sources.	None. Interpretation of existing regulations (see 71 FR at 52646).

We also received no adverse comment on the proposed amendments described in Section V.G (Calculating Rolling Averages for Averaging Periods in Excess of 12 Hours) of the September 6, 2006 preamble citation. That discussion described our intent to simplify the monitoring requirements for sources that select mercury or semivolatile metal feedrate limits averaged over periods greater than 12 hours. As described in the preamble, this would require identical changes to four paragraphs of the regulation: §§ 63.1209(n)(2)(v)(A)(2)(iv), 63.1209(n)(2)(v)(A)(3)(v), 63.1209(l)(1)(ii)(B)(5), and 63.1209(l)(1)(ii)(C)(5). However, corresponding regulatory changes to the latter three paragraphs were inadvertently omitted from the September 2006 proposed rule. In today's rule, we are correcting this oversight by promulgating the language proposed for § 63.1209(n)(2)(v)(A)(2)(iv) in all four paragraphs.

*B. Proposed Amendments for Which Comments Were Received*

1. Calculating Rolling Averages

a. *Summary of the Final Action.* We are revising §§ 63.1209(n)(2)(v)(B)(1), 63.1209(n)(2)(v)(B)(2), and 63.1209(o)(1)(ii)(A)(3) as proposed on September 6, 2006, 71 FR at 52640. These changes are intended to clarify that data for demonstrating compliance with feed rate limits of up to a 12-hour rolling average must be updated each minute. In addition, § 63.1209(n)(2)(v)(B)(1)(i) is modified to confirm that the chromium feed rate limit for boilers burning liquid hazardous waste with a heating value of 10,000 Btu/lb or greater is a 12-hour rolling average limit.

b. *What Are the Responses to Major Comments?*

*Comment:* We received two comments on this topic. One supported the changes as proposed. The other commenter objected to updating the 12-hour average every minute rather than every hour, arguing that this

complicates data management and could require increased data storage.

*Response:* We believe that complications to data management or increases in data storage requirements, if any, are negligible. Phase I sources—incinerators, cement kilns, and lightweight aggregate kilns—have been complying with 12-hour averages updated each minute for several years without significant problems. Furthermore, data storage is not measurably affected. These continuous monitors are required to record a data point at least once each minute, regardless of the whether the rolling average value for determining compliance is updated each minute or each hour. Consequently, the amount of recorded data is not significantly affected under either approach to calculating the rolling average.

Phase I sources have been required to update their 12-hour rolling average feed rate data each minute ever since the hazardous waste combustor MACT rule was first promulgated in 1999. A "rolling average" was defined in that rule as "the average of all one-minute averages over the averaging period." That definition has remained the same through the interim standards (for Phase I sources) and the replacement standards. We have consistently interpreted the definition to require that a new rolling average be calculated each minute. See, for example, the preamble discussion in the September 30, 1999 rule which says, while discussing how to calculate rolling averages upon initial startup, "Given that the one-hour, and 12-hour rolling averages for limits on various parameters must be updated each minute \* \* \*" 64 FR at 52924.

In the 2004 replacement standards proposed rule, we first introduced the concept of hourly updates to rolling averages, but only in the context of monitoring compliance with annual rolling average feed rate limits. See 69 FR at 21312. At no time did we discuss or propose any change to the long-standing requirement that rolling averages of 12 hours or less be updated each minute. In fact, we reiterated the

requirement for one-minute updates in discussing how compliance with the 12-hour thermal feed rate limits would be monitored. In that discussion we said that "For compliance, you would continuously monitor the feed rate of hazardous waste on a 12-hour rolling average updated each minute or, for standards based on normal emissions, on an annual rolling average updated each hour." *Id.* at 21312.

Given that we have consistently required rolling averages of 12 hours or less to be updated each minute and we have never discussed or proposed any changes to that approach, we find ample evidence that the addition of hourly updates for these parameters in the final replacement standards were, as we asserted in the proposed rule, inadvertent. Furthermore, we find no support for the commenter's claim that data management or data storage requirements are significantly affected under either approach. Therefore, we have removed the references to hourly updates, as proposed.

2. Expressing Particulate Matter Standards Using the International System of Units

a. *Summary of the Final Action.* We proposed to revise the particulate matter standards expressed in English units (gr/dscf) in §§ 63.1216 through 63.1221 by converting and expressing the standards using the International System of Units (SI). 71 FR at 52641. However, after considering the comments received in response to the proposed rule, we are not revising the standards as proposed. Thus, we are retaining the format of the particulate matter standards as promulgated in the October 12, 2005 final rule.

b. *What Are the Responses to Major Comments?*

*Comment:* We received three comments on this topic. One supported revising the particulate matter standards by expressing all particulate matter standards in SI units as proposed. Two other commenters opposed the proposed revisions because converting a standard from gr/dscf to mg/dscm and rounding to two significant figures can

increase (and apparently does for at least one affected source) the stringency of the standard.

*Response:* Given that the proposed conversion to SI units can increase the stringency of the promulgated standard in some instances, we are not revising the particulate matter standards as proposed. We do not believe the proposed revisions are appropriate because a source currently complying with the standard expressed in English units could find itself suddenly out of compliance if the standard were converted to SI units, after rounding the result to two significant figures. We believe this would be an inappropriate outcome for this "housekeeping" amendment.

### 3. Corrections to the Notice of Intent To Comply (NIC) Provisions for New Units

a. *Summary of the Final Action.* We proposed several corrections to the NIC regulatory provisions for new units to accurately reflect the time frames for holding the informal public meeting and submitting a final NIC. See 71 FR at 52645–646. Specifically, we made corrections to the time line (Figure 2; 71 FR at 52644), and proposed to revise § 63.1210(b)(3) and (c)(1), which are the core requirements for the informal public meeting and final NIC. We explained that it was our intent to clarify that existing units' NIC deadlines were based upon the effective date of the rule (e.g., " \* \* \* no later than one year following the effective date \* \* \*"), whereas new units' NIC deadlines were based upon a set number of days between NIC compliance activities (e.g., " \* \* \* or 60 days following the informal public meeting"). This was necessary because the final rule effective date has no bearing on new units. We further explained that since the public meetings for the NIC and the RCRA pre-application are to occur simultaneously for new units, we anticipate new units will plan accordingly and work with their permitting authorities to determine the most suitable time to begin the NIC compliance process.

Today we are amending § 63.1210(b)(3) and (c)(1) to accurately reflect the time frames for holding the informal public meeting and submitting a final NIC for new units. However, the amendments are not finalized as proposed, but rather were revised to

reflect a comment we received (see below). We are now further subdividing the paragraphs to explicitly differentiate between "existing units" and "new units." Also, to further clarify that new units are subject to the same NIC requirements, we have added a new paragraph (b)(5) to § 63.1212 with respect to the final NIC. While it essentially mirrors § 63.1210(b)(3), we believe it is important to clearly indicate all applicable NIC provisions for new units in § 63.1212.

#### b. *What Are the Responses to Major Comments?*

*Comment:* One comment was received in response to the proposed amendments. The commenter noted that the proposed § 63.1210(c)(1) language retains the 10 month deadline, but also requires that the meeting must be held no later than 30 days following the notice. The 30 day advance notice language of § 63.1210(c)(3) was retained. This puts the facility in a position of having to issue the public notice precisely 30 days before the public meeting (i.e., facilities have two 30 day deadlines, one working backward from the meeting date and one working forward from the notice date). The commenter suggested that the requirements for new units and existing units be presented as two separate paragraphs to better represent the timelines for each.

*Response:* We agree with the commenter. The few words added to § 63.1210(c)(1) do not clearly differentiate between existing and new units' NIC deadlines. The reference in § 63.1210(c)(1) to the " \* \* \* no later than 10 months after the effective date \* \* \*" was intended only for existing units and the proposed reference to " \* \* \* or 30 days following notice \* \* \*" was intended only for new units. The way the paragraph reads gives the appearance that both references may be applicable to all units. Therefore, if one reads the 30 day reference in § 63.1210(c)(1) to also apply to existing units, along with the 30 day reference which was retained in § 63.1210(c)(3), it creates the situation which the commenter correctly identifies.

We have subdivided § 63.1210(c)(1) (as well as § 63.1210(b)(3)) to clearly designate applicability for existing and new units as the commenter suggests. Section 63.1210(c)(1) is revised to

require the informal public meeting for new units to be held *no earlier than* 30 days following notice of the informal meeting, as opposed to *no later than* 30 days following the notice. Also, we have revised § 63.1212(b)(4) to state that the informal public meeting must be held *no earlier than* 30 days following notice of the meeting, so that it is consistent with § 63.1210(c)(1). Finally, as noted above, a new paragraph (b)(5) is added to § 63.1212 regarding submission of the final NIC.

#### C. *Corrections to the Startup, Shutdown, and Malfunction Plan Provisions*

This action also corrects a ministerial error by EPA that lead to inadvertent revision of § 63.1206(c)(2)(v). In a 2006 final rule amending the Part 63 general provisions, EPA made conforming changes to many individual MACT standards that merely incorporate the startup, shutdown and malfunction (SSM) requirements of the general provisions. 71 FR 20446 (April 20, 2006). In doing so, EPA inadvertently revised the SSM provisions tailored specifically for HWC facilities. Today, we are correcting that inadvertent error. Accordingly, we are revising § 63.1206(c)(2)(v)(A)(2) and (c)(2)(v)(B)(4) so that they read as they did before the April 20, 2006 revisions.

#### D. *Time Lines*

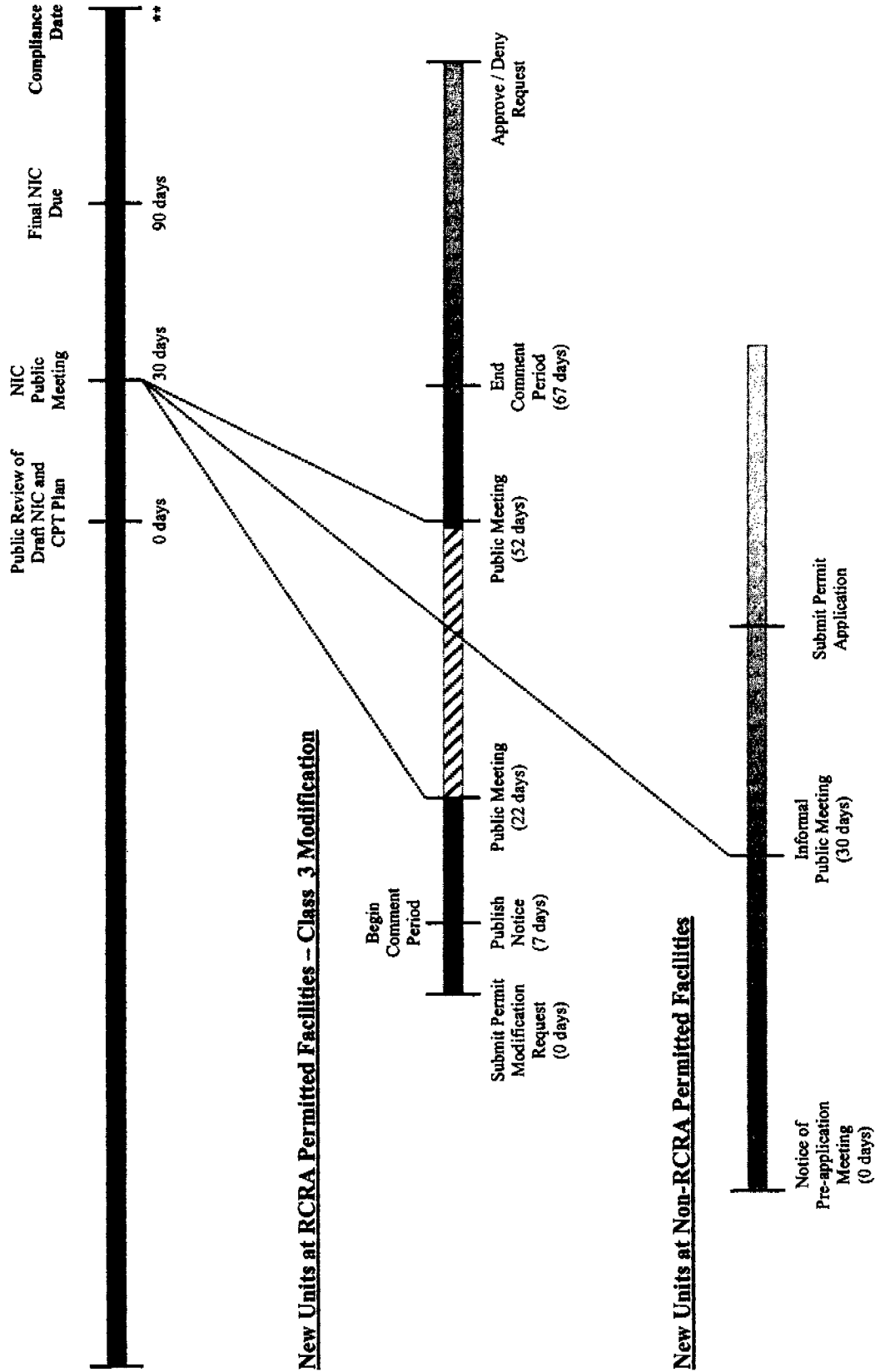
In the September 2006 proposed rule, we noted several errors in the time lines published in the October 12, 2005 final rule. See 70 FR 59524–525 and 71 FR at 52642–644. Consequently, we revised the time lines, Figures 1 and 2, to reflect the correct dates and time frames associated with compliance activities for Phase 1 (i.e., incinerators, cement kilns, and lightweight aggregate kilns) and Phase 2 sources (i.e., liquid and solid fuel boilers and hydrochloric acid production furnaces). In addition, we discussed the time line revisions and why the changes were necessary, as well as providing some clarifying remarks.

We did not receive any public comments on the revised time lines that were published in the proposed rule. For the reader's convenience, we are publishing the time lines again in today's final rule. Please refer to the proposal for the accompanying discussion of the time lines. 71 FR at 52642–643.

BILLING CODE 6560-50-P



**Figure 2. NIC and CPT Plan Time Line - New Units**



\*\* This is the date a new unit begins operations and places a documentation of compliance in its operating record.

### III. Impacts of the Final Rule

#### A. What facilities are affected by the final amendments?

A description of the affected source categories is discussed in the April 20, 2004 proposed rule. 69 FR at 21207-09. In the October 12, 2005 final rule, we estimated that there are a total of 267 sources subject to the rule requirements, including 116 boilers (104 liquid fuel boilers and 12 solid fuel boilers), 92 on-site incinerators, 25 cement kilns, 15 commercial incinerators, 9 lightweight aggregate kilns, and 10 hydrochloric acid production furnaces. 70 FR at 59530. While we are aware of several changes to the universe of operating hazardous waste combustors, these estimates remain a reasonable representation of existing operating sources.<sup>4</sup>

#### B. What are the impacts of the final rule?

The rule amendments do not change any of the impacts presented in the preamble to the October 12, 2005 final rule. See 70 FR at 59529-35.

### IV. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to OMB review.

#### B. Paperwork Reduction Act

This action does not impose any new information collection burden because there is no additional burden on affected sources as a result of the final rule. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (see 40 CFR part 9) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0171, EPA ICR number 1773.08. A copy of the OMB approved Information Collection Request (ICR) may be obtained by writing to: Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1700.

Burden means the total time, effort, or financial resources expended by persons

to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. As discussed in the October 12, 2005 final rule (which today's final rule amends), we determined that hazardous waste combustion facilities are not owned by small governmental jurisdictions or nonprofit organizations. 70 FR at 59538. Therefore, in that rule only small businesses were analyzed for small entity impacts (a small entity was defined either by the number of

employees or by the dollar amount of sales). We found that few—a total of eight out of 145 facilities—of the sources affected by the October 2005 rule were owned by small businesses. Finally, our analysis indicated that none of these facilities are likely to incur annualized compliance costs greater than one percent of gross annual corporate revenues. Cost impacts were found to range from less than 0.01 percent to 0.46 percent of annual gross corporate revenues. 70 FR at 59538.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. We note that today's final rule does not alter the number or type of small businesses that were discussed in the October 12, 2005 final rule. Additionally today's rule does not have any significant new regulatory requirements as compared to the requirements discussed in the October 12, 2005 final 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, EPA generally must prepare a written statement, including a cost-benefit analysis, for 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 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 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 why that alternative was not adopted. Before 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

<sup>4</sup> Given the small size of the lightweight aggregate kiln category, it is worth mentioning that the Solite Cascade plant in Virginia has ceased operations. Prior to closure, this plant operated four kiln sources. See also 70 FR at 59426.

affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This is because today's final rule does not add new requirements that would increase the costs of the original NESHAP for hazardous waste combustors. The NESHAP was published on September 30, 1999, and October 12, 2005, and had aggregated annualized social costs between \$50 to \$63 million (64 FR at 53022) and \$22.6 million (70 FR at 59538), respectively. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this final rule does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this final rule is not subject to section 203 of the UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. The final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the requirements of the final rule and as such would not bear substantial costs of effects. Thus, Executive Order 13132 does not apply to this rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to today's action. Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency 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 Agency.

EPA interprets Executive Order 13045 as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is based solely on technology performance and not on health or safety risks. Furthermore, this final rule is not considered "economically significant" as defined under EO 12866.

#### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

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

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action involves technical standards. During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. EPA adopted the following standards as practical alternatives to specified EPA test methods in the final rule: (1) American Society for Testing and Materials (ASTM) D6735-01, "Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method," and (2) American Society of Mechanical Engineers (ASME) standard QHO-1-2004, "Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators."

Section 63.1208 lists the test methods to determine compliance with the emission standards in the final rule. Under § 63.7(f) of the general provisions, a source may apply to EPA for permission to use alternative test methods in place of any required testing method, performance specification, or procedure.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority

populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the provisions contained within do not affect the level of protection to human health of the environment. The final amendments to the hazardous waste combustor NESHAP (40 CFR part 63 subpart EEE) are comprised of clarifications and revisions to current compliance and monitoring provisions that do not affect the current level of control at facilities subject to these rules.

**K. Congressional Review**

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final rule will be effective on April 8, 2008.

**List of Subjects**

**40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

**40 CFR Part 264**

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

**40 CFR Part 266**

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: March 26, 2008.

**Stephen L. Johnson,**  
Administrator

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

**PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES**

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Section 63.1203 is amended by adding paragraph (e) to read as follows:

**§ 63.1203 What are the standards for hazardous waste incinerators that are effective until compliance with the standards under § 63.1219?**

\* \* \* \* \*

(e) The provisions of this section no longer apply after any of the following dates, whichever occurs first:

(1) The date that your source begins to comply with § 63.1219 by placing a Documentation of Compliance in the operating record pursuant to § 63.1211(c);

(2) The date that your source begins to comply with § 63.1219 by submitting a Notification of Compliance pursuant to § 63.1210(b); or

(3) The date for your source to comply with § 63.1219 pursuant to § 63.1206 and any extensions granted there under.

■ 3. Section 63.1204 is amended by adding paragraph (i) to read as follows:

**§ 63.1204 What are the standards for hazardous waste burning cement kilns that are effective until compliance with the standards under § 63.1220?**

\* \* \* \* \*

(i) The provisions of this section no longer apply after any of the following dates, whichever occurs first:

(1) The date that your source begins to comply with § 63.1220 by placing a Documentation of Compliance in the operating record pursuant to § 63.1211(c);

(2) The date that your source begins to comply with § 63.1220 by submitting a Notification of Compliance pursuant to § 63.1210(b); or

(3) The date for your source to comply with § 63.1220 pursuant to § 63.1206 and any extensions granted there under.

■ 4. Section 63.1205 is amended by adding paragraph (e) to read as follows:

**§ 63.1205 What are the standards for hazardous waste burning lightweight aggregate kilns that are effective until compliance with the standards under § 63.1221?**

\* \* \* \* \*

(e) The provisions of this section no longer apply after any of the following dates, whichever occurs first:

(1) The date that your source begins to comply with § 63.1221 by placing a Documentation of Compliance in the

operating record pursuant to § 63.1211(c);

(2) The date that your source begins to comply with § 63.1221 by submitting a Notification of Compliance pursuant to § 63.1210(b); or

(3) The date for your source to comply with § 63.1221 pursuant to § 63.1206 and any extensions granted there under.

■ 5. Section 63.1206 is amended as follows:

■ a. By revising paragraph (a)(2) heading and the first sentence of paragraph (a)(2)(ii)(A).

■ b. By revising paragraphs (b)(14)(iv) and (b)(16) introductory text.

■ c. By revising paragraphs (c)(2)(v)(A)(2), (c)(2)(v)(B)(4), and (c)(9) introductory text.

**§ 63.1206 When and how must you comply with the standards and operating requirements?**

(a) \* \* \*

(2) *Compliance date for solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces that burn hazardous waste for standards under §§ 63.1216, 63.1217, and 63.1218.*

\* \* \* \* \*

(ii) \* \* \* (A) If you commenced construction or reconstruction of your hazardous waste combustor after April 20, 2004, you must comply with the new source emission standards of this subpart by the later of October 12, 2005, or the date the source starts operations, except as provided by paragraph (a)(2)(ii)(B) of this section. \* \* \*

\* \* \* \* \*

(b) \* \* \*

(14) \* \* \*

(iv) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (b)(14)(ii) and (iii) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

\* \* \* \* \*

(16) Compliance with subcategory standards for liquid fuel boilers. You must comply with the mercury, semivolatile metals, low volatile metals, and hydrogen chloride and chlorine standards for liquid fuel boilers under § 63.1217 as follows:

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) \* \* \*

(A) \* \* \*

(2) Although the automatic waste feed cutoff requirements continue to apply during a malfunction, an exceedance of an emission standard monitored by a CEMS or COMS or operating limit specified under § 63.1209 is not a violation of this subpart if you take the corrective measures prescribed in the startup, shutdown, and malfunction plan.

\* \* \* \* \*

(B) \* \* \*

(4) Although the automatic waste feed cutoff requirements of this paragraph apply during startup and shutdown, an exceedance of an emission standard or operating limit is not a violation of this subpart if you comply with the operating procedures prescribed in the startup, shutdown, and malfunction plan.

\* \* \* \* \*

(9) *Particulate matter detection system requirements.* If you combustor is equipped with an electrostatic precipitator or ionizing wet scrubber and you elect not to establish under § 63.1209(m)(1)(iv) site-specific control device operating parameter limits that are linked to the automatic waste feed cutoff system under paragraph (c)(3) of this section, or your combustor is equipped with a fabric filter and you elect to use a particulate matter detection system pursuant to paragraph (c)(8)(i)(B) of this section, you must continuously operate a particulate matter detection system that meets the specifications and requirements of paragraphs (c)(9)(i) through (iii) of this section and you must comply with the corrective measures and notification requirements of paragraphs (c)(9)(iv) through (v) of this section.

\* \* \* \* \*

- 6. Section 63.1207 is amended as follows:
- a. By adding paragraph (b)(3)(vi).
- b. By revising paragraphs (d)(1), (d)(2), and (d)(4).
- c. By revising the first sentence of paragraphs (g)(2)(i) and (g)(2)(ii).
- d. By revising paragraph (m).

**§ 63.1207 What are the performance testing requirements?**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(vi) Sources that are required to perform the one-time dioxin/furan test pursuant to paragraph (b)(3) of this section are not required to perform confirmatory performance tests.

\* \* \* \* \*

(d) \* \* \*

(1) *Comprehensive performance testing.* Except as otherwise specified in

paragraph (d)(4) of this section, you must commence testing no later than 61 months after the date of commencing the previous comprehensive performance test used to show compliance with §§ 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, or 63.1221. If you submit data in lieu of the initial performance test, you must commence the subsequent comprehensive performance test within 61 months of commencing the test used to provide the data in lieu of the initial performance test.

(2) *Confirmatory performance testing.* Except as otherwise specified in paragraph (d)(4) of this section, you must commence confirmatory performance testing no later than 31 months after the date of commencing the previous comprehensive performance test used to show compliance with §§ 63.1217, 63.1219, 63.1220, or 63.1221. If you submit data in lieu of the initial performance test, you must commence the initial confirmatory performance test within 31 months of the date six months after the compliance date. To ensure that the confirmatory test is conducted approximately midway between comprehensive performance tests, the Administrator will not approve a test plan that schedules testing within 18 months of commencing the previous comprehensive performance test.

\* \* \* \* \*

(4) *Applicable testing requirements under the interim standards.* (i) *Waiver of periodic comprehensive performance tests.* Except as provided by paragraph (c)(2) of this section, you must conduct only an initial comprehensive performance test under the interim standards (§§ 63.1203 through 63.1205); all subsequent comprehensive performance testing requirements are waived under the interim standards. The provisions in the introductory text to paragraph (d) and in paragraph (d)(1) of this section apply only to tests used to demonstrate compliance with the replacement standards promulgated on or after October 12, 2005.

(ii) *Waiver of confirmatory performance tests.* You are not required to conduct a confirmatory test under the interim standards (§§ 63.1203 through 63.1205). The confirmatory testing requirements in the introductory text to paragraph (d) and in paragraph (d)(2) of this section apply only after you have demonstrated compliance with the replacement standards promulgated on or after October 12, 2005.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(i) Carbon monoxide (or hydrocarbon) CEMS emissions levels must be within the range of the average value to the maximum value allowed, except as provided by paragraph (g)(2)(v) of this section. \* \* \*

(ii) Each operating limit (specified in § 63.1209) established to maintain compliance with the dioxin/furan emission standard must be held within the range of the average value over the previous 12 months and the maximum or minimum, as appropriate, that is allowed, except as provided by paragraph (g)(2)(v) of this section. \* \* \*

\* \* \* \* \*

(m) *Waiver of performance test.* You are not required to conduct performance tests to document compliance with the mercury, semivolatile metals, low volatile metals, or hydrogen chloride/chlorine gas emission standards under the conditions specified in paragraphs (m)(1) or (m)(2) of this section. The waiver provisions of this paragraph apply in addition to the provisions of § 63.7(h).

(1) *Emission standards based on exhaust gas flow rate.* (i) You are deemed to be in compliance with an emission standard based on the volumetric flow rate of exhaust gas (i.e. µg/dscm or ppmv) if the twelve-hour rolling average maximum theoretical emission concentration (MTEC) determined as specified below does not exceed the emission standard:

- (A) Determine the feedrate of mercury, semivolatile metals, low volatile metals, or total chlorine and chloride from all feedstreams;
- (B) Determine the stack gas flowrate; and

(C) Calculate a MTEC for each standard assuming all mercury, semivolatile metals, low volatile metals, or total chlorine (organic and inorganic) from all feedstreams is emitted;

(ii) To document compliance with this provision, you must:

(A) Monitor and record the feedrate of mercury, semivolatile metals, low volatile metals, and total chlorine and chloride from all feedstreams according to § 63.1209(c);

(B) Monitor with a CMS and record in the operating record the gas flowrate (either directly or by monitoring a surrogate parameter that you have correlated to gas flowrate);

(C) Continuously calculate and record in the operating record the MTEC under the procedures of paragraph (m)(1)(i) of this section; and

(D) Interlock the MTEC calculated in paragraph (m)(1)(i)(C) of this section to the AWFCO system to stop hazardous waste burning when the MTEC exceeds the emission standard.

(iii) in lieu of the requirement in paragraphs (m)(1)(ii)(C) and (D) of this section, you may:

(A) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury, semivolatile metals, low volatile metals, and/or total chlorine and chloride from all feedstreams that ensures the MTEC as calculated in paragraph (m)(1)(i)(C) of this section is below the applicable emission standard; and

(B) Interlock the minimum gas flowrate limit and maximum feedrate limit of paragraph (m)(1)(iii)(A) of this section to the AWFCO system to stop hazardous waste burning when the gas flowrate or mercury, semivolatile metals, low volatile metals, and/or total chlorine and chloride feedrate exceeds the limits of paragraph (m)(1)(iii)(A) of this section.

(2) *Emission standards based on hazardous waste thermal concentration.*

(i) You are deemed to be in compliance with an emission standard specified on a hazardous waste thermal concentration basis (i.e., pounds emitted per million Btu of heat input) if the HAP thermal concentration in the waste feed does not exceed the allowable HAP thermal concentration emission rate.

(ii) To document compliance with this provision, you must:

(A) Monitor and record the feedrate of mercury, semivolatile metals, low volatile metals, and total chlorine and chloride from all hazardous waste feedstreams in accordance with § 63.1209(c);

(B) Determine and record the higher heating value of each hazardous waste feed;

(C) Continuously calculate and record the thermal feed rate of all hazardous waste feedstreams by summing the products of each hazardous waste feed rate multiplied by the higher heating value of that hazardous waste;

(D) Continuously calculate and record the total HAP thermal feed concentration for each constituent by dividing the HAP feedrate determined in paragraph (m)(2)(ii)(A) of this section by the thermal feed rate determined in paragraph (m)(2)(ii)(C) of this section for all hazardous waste feedstreams;

(E) Interlock the HAP thermal feed concentration for each constituent with the AWFCO to stop hazardous waste feed when the thermal feed concentration exceeds the applicable thermal emission standard.

(3) When you determine the feedrate of mercury, semivolatile metals, low volatile metals, or total chlorine and chloride for purposes of this provision, except as provided by paragraph (m)(4)

of this section, you must assume that the analyte is present at the full detection limit when the feedstream analysis determines that the analyte is not detected in the feedstream.

(4) Owners and operators of hazardous waste burning cement kilns and lightweight aggregate kilns may assume that mercury is present in raw material at half the detection limit when the raw material feedstream analysis determines that mercury is not detected.

(5) You must state in the site-specific test plan that you submit for review and approval under paragraph (e) of this section that you intend to comply with the provisions of this paragraph. You must include in the test plan documentation that any surrogate that is proposed for gas flowrate adequately correlates with the gas flowrate.

■ 7. Section 63.1209 is amended as follows:

- a. By revising paragraphs (l)(1)(ii)(B)(5) and (l)(1)(ii)(C)(5).
- b. By revising paragraphs (l)(1)(iii)(B) and (l)(1)(iii)(C) introductory text.
- c. By revising paragraphs (l)(1)(iii)(D)(1), and (l)(1)(iii)(D)(2).
- d. By revising paragraph (n)(2)(iii)(A).
- e. By revising paragraphs (n)(2)(v)(A)(2)(iv) and (n)(2)(v)(A)(3)(v).
- f. By revising paragraphs (n)(2)(v)(B)(1)(i), (n)(2)(v)(B)(1)(ii), and (n)(2)(v)(B)(2).
- g. By revising the first sentence of paragraph (n)(2)(vii) introductory text.
- h. By revising paragraph (o)(1)(ii)(A)(3).

**§ 63.1209 What are the monitoring requirements?**

\* \* \* \* \*

- (l) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*
- (B) \* \* \*

(5) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section.

Thereafter, you must calculate rolling averages using either one-minute or one-hour updates. Hourly updates shall be calculated using the average of the one-minute average data for the preceding hour. For the period beginning with initial operation under this standard until the source has operated for the full averaging period that you select, the average feedrate shall be based only on actual operation under this standard.

(C) \* \* \*

(5) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must

calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section.

Thereafter, you must calculate rolling averages using either one-minute or one-hour updates. Hourly updates shall be calculated using the average of the one-minute average data for the preceding hour. For the period beginning with initial operation under this standard until the source has operated for the full averaging period that you select, the average feedrate shall be based only on actual operation under this standard.

(iii) \* \* \*

(B) When complying with the emission standards under §§ 63.1204 and 63.1220(a)(2)(ii)(A) and (b)(2)(ii)(A), you must establish a 12-hour rolling average limit for the feedrate of mercury in all feedstreams as the average of the test run averages;

(C) Except as provided by paragraph (l)(1)(iii)(D) of this section, when complying with the hazardous waste maximum theoretical emission concentration (MTEC) under § 63.1220(a)(2)(ii)(B) and (b)(2)(ii)(B), you must:

\* \* \* \* \*

(D) \* \* \*

(1) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury from all hazardous waste feedstreams that ensures the MTEC calculated in paragraph (l)(1)(iii)(C)(4) of this section is below the operating requirement under paragraphs §§ 63.1220(a)(2)(ii)(B) and (b)(2)(ii)(B); and

(2) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when either the gas flowrate or mercury feedrate exceeds the limits identified in paragraph (l)(1)(iii)(D)(1) of this section.

\* \* \* \* \*

(n) \* \* \*

(2) \* \* \*

(iii) \* \* \* (A) When complying with the emission standards under § 63.1220(a)(3)(i), (a)(4)(i), (b)(3)(i), and (b)(4)(i), you must establish 12-hour rolling average feedrate limits for semivolatile and low volatile metals as the thermal concentration of semivolatile metals or low volatile metals in all hazardous waste feedstreams. You must calculate hazardous waste thermal concentrations for semivolatile metals and low volatile metals for each run as the total mass feedrate of semivolatile metals or low volatile metals for all hazardous waste feedstreams divided by the total heat

input rate for all hazardous waste feedstreams. The 12-hour rolling average feedrate limits for semivolatile metals and low volatile metals are the average of the test run averages, calculated on a thermal concentration basis, for all hazardous waste feeds.

\* \* \* \* \*

- (v) \* \* \*
- (A) \* \* \*
- (2) \* \* \*

(iv) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. Thereafter, you must calculate rolling averages using either one-minute or one-hour updates. Hourly updates shall be calculated using the average of the one-minute average data for the preceding hour. For the period beginning with initial operation under this standard until the source has operated for the full averaging period that you select, the average feedrate shall be based only on actual operation under this standard.

\* \* \* \* \*

- (3) \* \* \*

(v) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. Thereafter, you must calculate rolling averages using either one-minute or one-hour updates. Hourly updates shall be calculated using the average of the one-minute average data for the preceding hour. For the period beginning with initial operation under this standard until the source has operated for the full averaging period that you select, the average feedrate shall be based only on actual operation under this standard.

- (B) \* \* \*

(1) \* \* \* (i) The 12-hour rolling average feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of chromium in all hazardous waste feedstreams per million Btu of hazardous waste fed to the boiler. You must establish the 12-hour rolling average feedrate limit as the average of the test run averages.

(ii) You must comply with the hazardous waste chromium thermal concentration limit by determining the feedrate of chromium in all hazardous waste feedstreams (lb/hr) and the hazardous waste thermal feedrate (MMBtu/hr) at least once each minute as [hazardous waste chromium feedrate (lb/hr)/hazardous waste thermal feedrate (MMBtu/hr)].

(2) Boilers that feed hazardous waste with a heating value less than 10,000 Btu/lb. You must establish a 12-hour rolling average limit for the total feedrate (lb/hr) of chromium in all feedstreams as the average of the test run averages.

\* \* \* \* \*

(vii) Extrapolation of feedrate levels. In lieu of establishing feedrate limits as specified in paragraphs (n)(2)(ii) through (vi) of this section, you may request as part of the performance test plan under §§ 63.7(b) and (c) and §§ 63.1207(c) and (f) to use the semivolatile metal and low volatile metal feedrates and associated emission rates during the comprehensive performance test to extrapolate to higher allowable feedrate limits and emission rates.

\* \* \* \* \*

- (o) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*
- (A) \* \* \*

(3) You must comply with the feedrate limit by determining the mass feedrate of hazardous waste feedstreams (lb/hr) at least once a minute and by knowing the chlorine content (organic and inorganic, lb of chlorine/lb of hazardous waste) and heating value (Btu/lb) of hazardous waste feedstreams at all times to calculate a 1-minute average feedrate measurement as [hazardous waste chlorine content (lb of chlorine/lb of hazardous waste feed)/hazardous waste heating value (Btu/lb of hazardous waste)]. You must update the rolling average feedrate each hour with this 60-minute average feedrate measurement.

\* \* \* \* \*

■ 8. Section 63.1210 is amended by revising paragraphs (b) introductory text, (b)(3), and (c)(1) to read as follows:

**§ 63.1210 What are the notification requirements?**

\* \* \* \* \*

(b) Notification of intent to comply (NIC). These procedures apply to sources that have not previously complied with the requirements of paragraphs (b) and (c) of this section, and to sources that previously complied with the NIC requirements of §§ 63.1210 and 63.1212(a), which were in effect prior to October 11, 2000, that must make a technology change requiring a Class 1 permit modification to meet the standards of §§ 63.1219, 63.1220, and 63.1221.

\* \* \* \* \*

(3) You must submit the final NIC to the Administrator:

(i) Existing units. No later than one year following the effective date of the emission standards of this subpart; or  
(ii) New units. No later than 60 days following the informal public meeting.

(c) \* \* \* (1) Prior to the submission of the NIC to the permitting agency and:

(i) Existing units. No later than 10 months after the effective date of the emission standards of this subpart, you must hold at least one informal meeting with the public to discuss the anticipated activities described in the draft NIC for achieving compliance with the emission standards of this subpart. You must post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(ii) New units. No earlier than thirty (30) days following notice of the informal public meeting, you must hold at least one informal meeting with the public to discuss the anticipated activities described in the draft NIC for achieving compliance with the emission standards of this subpart. You must post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

\* \* \* \* \*

■ 9. Section 63.1212 is amended by revising paragraphs (b)(1), (b)(3), and (b)(4) and adding paragraph (b)(5) to read as follows:

**§ 63.1212 What are the other requirements pertaining to the NIC?**

\* \* \* \* \*

- (b) \* \* \*

(1) Prepare a draft NIC pursuant to § 63.1210(b) and make it available to the public upon issuance of the notice of public meeting pursuant to § 63.1210(c)(3);

\* \* \* \* \*

(3) Provide notice to the public of a pre-application meeting pursuant to § 124.31 of this chapter or notice to the public of a permit modification request pursuant to § 270.42 of this chapter;

(4) Hold an informal public meeting [pursuant to § 63.1210(c)(1) and (c)(2)] no earlier than 30 days following notice of the NIC public meeting and notice of the pre-application meeting or notice of the permit modification request to discuss anticipated activities described in the draft NIC and pre-application or permit modification request for achieving compliance with the emission standards of this subpart; and

(5) Submit a final NIC pursuant to § 63.1210(b)(3).

\* \* \* \* \*

■ 10. Section 63.1215 is amended as follows:

■ a. By revising paragraph (a)(1)(i).

■ b. By revising the definitions of “1-Hour Average HCl-Equivalent Emission Rate” and “1-Hour Average HCl-Equivalent Emission Rate Limit” in paragraph (a)(2).

■ c. By revising paragraphs (b)(2), (b)(3), and (b)(6)(ii)(C).

■ d. By revising paragraph (f)(5)(ii)(A).

■ e. By revising paragraph (h)(2)(i).

**§ 63.1215 What are health-based compliance alternatives for total chlorine?**

\* \* \* \* \*

(a) \* \* \*  
(1) \* \* \*

(i) Identify a total chlorine emission concentration (ppmv) expressed as chloride (Cl<sup>-</sup>) equivalent for each on site hazardous waste combustor. You may select total chlorine emission concentrations as you choose to demonstrate eligibility for the risk-based limits under this section, except as provided by paragraph (b)(7) of this section;

\* \* \* \* \*

(2) \* \* \*

**1-Hour Average HCl-Equivalent Emission Rate** means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using aRELS as the health risk metric for acute exposure.

**1-Hour Average HCl-Equivalent Emission Rate Limit** means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using aRELS as the health risk metric for acute exposure and which ensures that maximum 1-hour average ambient concentrations of HCl-equivalents do not exceed a Hazard Index of 1.0, rounded to the nearest tenths decimal place (0.1), at an off-site receptor location.

\* \* \* \* \*

(b) \* \* \*

(2) **Annual average rates.** You must calculate annual average toxicity-weighted HCl-equivalent emission rates for each combustor as follows:

$$ER_{I,LTW} = ER_{HCl} + ER_{Cl_2} \times (Rf_{HCl}/Rf_{Cl_2})$$

Where:

$ER_{LTW}$  is the annual average HCl toxicity-weighted emission rate (HCl-equivalent emission rate) considering long-term exposures, lb/hr

$ER_{HCl}$  is the emission rate of HCl in lbs/hr

$ER_{Cl_2}$  is the emission rate of chlorine in lbs/hr

$Rf_{HCl}$  is the reference concentration of HCl

$Rf_{Cl_2}$  is the reference concentration of chlorine

(3) **1-hour average rates.** You must calculate 1-hour average toxicity-weighted HCl-equivalent emission rates for each combustor as follows:

$$ER_{STW} = ER_{HCl} + ER_{Cl_2} \times (aREL_{HCl}/aREL_{Cl_2})$$

Where:

$ER_{STW}$  is the 1-hour average HCl-toxicity-weighted emission rate (HCl-equivalent emission rate) considering 1-hour (short-term) exposures, lb/hr

$ER_{HCl}$  is the emission rate of HCl in lbs/hr

$ER_{Cl_2}$  is the emission rate of chlorine in lbs/hr

$aREL_{HCl}$  is the aREL for HCl

$aREL_{Cl_2}$  is the aREL for chlorine

\* \* \* \* \*

(6) \* \* \*

(ii) \* \* \*

(C) You must calculate the 1-hour average HCl-equivalent emission rate using these HCl and Cl<sub>2</sub> emission rates and the equation in paragraph (b)(3) of this section.

\* \* \* \* \*

(f) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(A) You must determine your chlorine emissions to be the higher of the value measured by Method 26/26A as provided in appendix A-8, part 60 of this chapter, or an equivalent method, or the value calculated by the difference between the combined hydrogen chloride and chlorine levels measured by Method 26/26A as provided in appendix A-8, part 60 of this chapter, or an equivalent method, and the hydrogen chloride measurement from EPA Method 320/321 as provided in appendix A, part 63 of this chapter, or ASTM D 6735-01 as described under § 63.1208(b)(5)(i)(C), or an equivalent method.

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \*

(i) **Proactive review.** You must submit for review and approval with each comprehensive performance test plan either a certification that the information used in your eligibility demonstration has not changed in a manner that would decrease the annual average or 1-hour average HCl-equivalent emission rate limit, or a revised eligibility demonstration.

\* \* \* \* \*

■ 11. Section 63.1217 is amended by revising paragraphs (a)(6)(ii) and (b)(6)(ii) to read as follows:

**§ 63.1217 What are the standards for liquid fuel boilers that burn hazardous waste?**

(a) \* \* \*

(6) \* \* \*

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of  $5.1 \times 10^{-2}$  lbs combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per

million Btu heat input from the hazardous waste;

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of  $5.1 \times 10^{-2}$  lbs combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste;

\* \* \* \* \*

■ 12. Section 63.1220 is amended by revising paragraphs (a)(2)(ii) and (b)(2)(ii) to read as follows:

**§ 63.1220 What are the replacement standards for hazardous waste burning cement kilns?**

(a) \* \* \*

(2) \* \* \*

(ii) Either:

(A) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen, or

(B) A hazardous waste feed maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) Either:

(A) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen, or

(B) A hazardous waste feed maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

\* \* \* \* \*

**PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

■ 13. The authority citation for part 264 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924 and 6925.

■ 14. Section 264.340 is amended as follows:

■ a. By revising the first sentence of paragraph (b)(1) and paragraph (b)(3).

■ b. By removing paragraph (b)(5).

**§ 264.340 Applicability.**

\* \* \* \* \*

(b) \* \* \*

(1) Except as provided by paragraphs (b)(2) through (b)(4) of this section, the standards of this part do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates

compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter. \* \* \*

\* \* \* \* \*

(3) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard under §§ 63.1206(b)(14) and 63.1219(e) of this chapter.

\* \* \* \* \*

#### **PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES**

■ 15. The authority citation for part 266 continues to read as follows:

**Authority:** 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

#### **§ 266.100 [Amended]**

■ 16. Section 266.100 is amended by redesignating the second paragraph (b)(3)(ii) as (b)(3)(iii).

[FR Doc. E8–6667 Filed 4–7–08; 8:45 am]

BILLING CODE 6560–50–P

### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 223**

[Docket No. 071030628–8482–02]

RIN 0648–AV84

#### **Endangered and Threatened Wildlife; Sea Turtle Conservation**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to clarify the existing sea turtle conservation requirements for sea scallop dredge vessels entering waters south of 41°9.0' N. latitude from May 1 through November 30 each year and to add a transiting provision to the requirements. Any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery

permit, regardless of dredge size or vessel permit category, that enters waters south of 41°9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone (EEZ) must have a chain mat on each dredge, unless the terms of the transiting provision are met. The chain-mat modified dredge is necessary to help reduce mortality and injury to endangered and threatened sea turtles in scallop dredge gear and to conserve sea turtles listed under the Endangered Species Act (ESA). This current action addresses a procedural error in the original rulemaking to require chain mats on scallop dredge gear, clarifies the existing requirements, and adds a transiting provision to the regulations. Any incidental take of threatened sea turtles in sea scallop dredge gear in compliance with this gear modification requirement and all other applicable requirements will be exempted from the ESA's take prohibition.

**DATES:** Effective May 8, 2008.

**ADDRESSES:** Copies of the Environmental Assessment (EA) and Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this final rule may be obtained by writing to Ellen Keane, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Ellen Keane (ph. 978–281–9300 x6526, fax 978–281–9394, e-mail [ellen.keane@noaa.gov](mailto:ellen.keane@noaa.gov)) or Barbara Schroeder (ph. 301–713–2322, fax 301–427–2522, e-mail [barbara.schroeder@noaa.gov](mailto:barbara.schroeder@noaa.gov)).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico that are listed as endangered. Due to the inability to distinguish between these populations of green turtles away from the nesting beach, NMFS considers green sea turtles endangered wherever they occur in U.S. waters. Kemp's ridley, hawksbill, loggerhead, and green sea turtles are hard-shelled sea turtles. The incidental take, both lethal and non-lethal, of loggerhead, Kemp's ridley, and unidentified hard-shelled

sea turtles has been documented in the sea scallop dredge fishery, as well as a non-lethal take of a green sea turtle (NEFSC FSB, Observer Database). In addition, an unconfirmed take of a leatherback sea turtle was reported during the experimental fishery to test the chain-mat modified dredge gear (DuPaul *et al.*, 2004).

This action is being taken under the ESA provisions authorizing the issuance of regulations to conserve threatened species and for enforcement purposes (sections 4(d) and 11(f), respectively). The requirement to use chain-mat modified dredge gear is necessary to provide for the conservation of threatened loggerhead sea turtles, and will have ancillary benefits for other sea turtle species that have been taken in the sea scallop dredge fishery, albeit to a lesser extent than loggerheads. Under the ESA and its implementing regulations, taking endangered sea turtles—even incidentally—is prohibited. The incidental take of endangered species may only legally be exempted by an incidental take statement (ITS) or an incidental take permit issued pursuant to section 7 or 10 the ESA, respectively. Existing sea turtle conservation regulations at 50 CFR 223.206(d) exempt fishing activities and scientific research from the prohibition on takes of threatened species under certain conditions. Any incidental take of threatened loggerhead sea turtles in sea scallop dredge gear in compliance with this gear modification requirement and other applicable requirements is exempted from the prohibition against takes.

The chain-mat modified dredge is expected to benefit sea turtles following an interaction in the water column. Based on the available information, NMFS has determined that the use of a chain-mat modified dredge will prevent most captures of sea turtles in the dredge bag as well as any ensuing injuries as a result of such capture (e.g., crushing in the dredge bag, crushing on deck, etc.). However, NMFS has made the conservative assumption that a turtle in a bottom interaction sustains significant injuries on the bottom, so, under this conservative assumption, there would not be a benefit from the chain mat for bottom interactions. This assumption, however, may be too conservative in that it is possible (although not likely) that turtles in a bottom interaction only receive minor injuries. In the unlikely scenario of a turtle receiving only minor injuries following a bottom interaction, the chain mat modification would prevent significant injuries that result from capture in the dredge bag (i.e., injuries

**ORIGINAL**

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR QUALITY

IN THE MATTER OF:

PROPOSED REVISIONS TO RULE  
45CSR25, CONTROL OF AIR POLLUTION  
FROM HAZARDOUS WASTE TREATMENT,  
STORAGE AND DISPOSAL FACILITIES

**TRANSCRIPT OF PROCEEDINGS** had or testimony adduced pursuant to the West Virginia Rules of Civil Procedure in the above-entitled action, on the 11<sup>th</sup> day of August, 2008, commencing at 6:21 p.m. and concluding at 6:24 p.m., at the West Virginia Department of Environmental Protection, 601 57<sup>th</sup> Street S.E., Charleston, Kanawha County, West Virginia, taken by Jo Ann Wilson, Certified Court Reporter, duly certified by the West Virginia Supreme Court of Appeals and Notary of West Virginia, pursuant to notice to all interested parties.

BEFORE: JAMES MASON, Moderator

---

**NANCY MCNEALY**  
CERTIFIED COURT REPORTER  
Post Office Box 13415  
Charleston, West Virginia 25360-0415  
(304) 988-2873 FAX (304) 988-1419

I N D E X

Reporter's Certificate.....Page 5

1 MR. MASON: This public hearing will now  
2 come to order on this 11<sup>th</sup> day of August, 2008, at the West  
3  
4 Headquarters. Comments and testimony will be accepted  
5 until the close of this hearing, and will be made part of  
6 the rulemaking record. Any questions regarding revisions  
7 to the rules will be included with your comments. Any such  
8 question will be answered as part of the response to  
9 comments in the rulemaking record.

10 The purpose of this public hearing is to  
11 satisfy state rulemaking requirements by accepting comments  
12 on Proposed Revisions to 45CSR25, Control of Air Pollution  
13 from Hazardous Waste Treatment, Storage, and Disposal  
14 Facilities. This rule establishes and adopts emission  
15 standards for the treatment, storage and disposal of  
16 hazardous waste promulgated by the United States  
17 Environmental Protection Agency, pursuant to the Resource  
18 Conservation and Recovery Act.

19 This rule codifies general procedures and  
20 criteria to implement emission standards set forth in 40CFR  
21 Parts 260, 261, 262, 264, 265, 266, 270, and 279, as listed  
22 in Table 25-A of the rule. Promulgation of this rule will  
23 enable the Department of Environmental Protection to  
24 continue to be the primary enforcement authority for the

1 Hazardous Waste Management System in West Virginia.

2 Revisions to this rule are necessary to  
3 maintain consistency with current federal regulations, the  
4 Office of Waste Management's Hazardous Waste Management  
5 System rule 33CSR20, and to fulfill the State's  
6 responsibilities under the Clean Air Act. Revisions to the  
7 rule include annual incorporation of federal regulations as  
8 of July 1, 2008.

9 The floor is now open for comments.

10 (There being no comments,  
11 Proceedings resumed as follows.)

12 MR. MASON: There being nothing further,  
13 this public hearing for Proposed Rule 45CSR25 is concluded.

14 (WHEREUPON, the public hearing was concluded.)

**REPORTER'S CERTIFICATE**

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

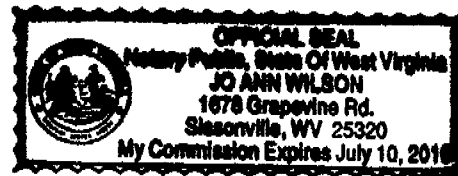
I, **JO ANN WILSON**, Certified Court Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 20<sup>th</sup> day of August,  
2008.

My commission expires July 10, 2016.

*Jo Ann Wilson, C.C.R.*

Certified Court Reporter





## **45CSR25**

### **CONTROL OF AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES**

#### **RESPONSE TO COMMENTS**

On July 11, 2008, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on August 11, 2008 to accept oral comments on proposed revisions to legislative rule 45CSR25. Written comments were also accepted through 6:00 PM on Monday, August 11, 2008. No commenter submitted written comments regarding proposed revisions to rule 45CSR25, and no commenter provided verbal comments.