

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

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OFFICE OF THE
SECRETARY OF STATE

Form #3

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

AGENCY: WV Dept. of Environmental Protection - Div. of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: W. V. Code §22-5-4 and §22-18-1

AMENDMENT TO AN EXISTING RULE: YES NO

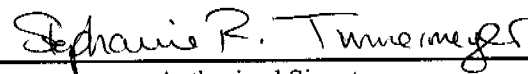
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR25

TITLE OF RULE BEING AMENDED: To Prevent and Control Air Pollution from Hazardous
Waste Treatment, Storage, or 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

Stephanie R. Timmermeyer, Secretary

WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

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2003 JUN 11 P 3:06

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #1

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV DEP - Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative CITE AUTHORITY: W.V. Code §22-5-4 and §22-18-1

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: 45CSR25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 15, 2003 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Division of Air Quality
7012 MacCorkle Avenue, S.E.
Charleston, WV 25304-2943

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

John A. Benedict, Director

Division of Air Quality

7012 MacCorkle Avenue, S.E.
Charleston, WV 25304-2943

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Sophia R Timmermejer
Authorized Signature

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

BRIEFING DOCUMENT

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

A. AUTHORITY: W.Va. Code §§22-5-4 and §§22-18-1 et seq.

B. SUMMARY OF RULE:

The current version of 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:

The U.S. Environmental Protection Agency promulgated standards for hazardous waste incinerators, cement kilns and light aggregate kilns on September 30, 1999, and subsequently promulgated three rules that revised these regulations: a Direct Final Rule published on July 3, 2001, an interim Standards Rule published on February 13, 2002, and a Final Amendments Rule published on February 14, 2002. These standards were included in 45CSR25, previously filed and made effective July 1, 2003. The purpose of this rule revision is to incorporate by reference the recent technical correction of the rule finalized in 67 Federal Register 77687 (December 19, 2002). In addition, the proposed rule changes are required to maintain consistency with the Division of Water and Waste Management's rule (33CSR20) and with the federal regulations. The consistency of 45CSR25, 33CSR20 and federal regulations is important for final authorization of the WV State RCRA Hazardous Waste Management Program.

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 §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 3, 2003 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.



**Advisory Council Meeting
Minutes
June 3, 2003**

Attendees:

Rick Roberts, Advisory Council Member	John Benedict, WVDEP
Larry Harris, Advisory Council Member	Lucy Pontiveros, WVDEP
Bill Raney, Advisory Council Member	Jim Mason, WVDEP
Lisa Dooley, Advisory Council Member	Allyn Turner, WVDEP
Jackie Hallinan, Advisory Council Member	Bill Brannon, WVDEP
Stephanie R. Timmermeyer, WVDEP	Mike Dorsey, WVDEP
Joseph M. Dawley, WVDEP	Mike Zeto, WVDEP
Karen G. Watson, WVDEP	Pam Nixon, WVDEP
Jessica Greathouse, WVDEP	Lewis Halstead, WVDEP
Cathy Marcum, Tinney Law Firm	Charlie Sturey, WVDEP

The meeting was called to order at 9:15 a.m. by Joseph M. Dawley, General Counsel for the West Virginia Department of Environmental Protection.

PRESENTATION OF PROPOSED RULES FOR THE 2004 LEGISLATIVE SESSION

Division of Air Quality

John Benedict, Director of DAQ presented the following rules:

45CSR1 - No_x Trading Program as a means of control and reduction of nitrogen oxides from non-electric generating units.

Bill Raney inquired about 45CSR1 and wanted to know how this rule had been lost in the shuffle during the 2003 session? Jim Mason explained that the delay was from a legislative clerical error.

Jackie Hallinan asked what would happen if there were additional clerical errors like what happened during this legislative session? John Benedict responded it would not present a serious problem, he thought the agency could work the matter out with the EPA

45CSR15- Emission standards for hazardous air pollutants pursuant to 40 CFR Part 61.

- 45CSR 16 - Standards of performance for new stationary sources pursuant to 40 CFR part 60
- 45CSR25 - To prevent and control air pollution from hazardous waste treatment, storage, or disposal facilities
- 45CSR34 - Emission standards for hazardous air pollutants for sources categories pursuant to 40 CFR Part 63
- 45CSR36 - Requirements for determining conformity of transportation plans, program, and projects developed, funded or approved under title 23 U.S.C. or the federal transit laws, to applicable air quality implementation plans (transportation Conformity)

Rick Roberts questioned how the rule relates to “political subdivisions?” John Benedict explained that DAQ prepares emission budgets and works with Metropolitan Planning Organizations. He also said that the Memorandums of Understanding (MOU) with these organizations will no longer be appended to rule 45CSR36.

Rick Roberts also asked if the rule only addresses emissions from vehicles? John Benedict answered yes.

General Air Rule Questions:

Larry Harris asked if the rules include emission limits? John responded the rules incorporate by reference the emission limitations contained in federal regulations.

Bill Raney asked if the air rules contained anything different from the federal counterpart regulations? John responded they do not.

Although not a Rulemaking issue, Larry Harris stated that he had recently reviewed a agency letter regarding Longview Power and its proposed SO₂ emissions and inquired on the environmental impacts of this facility.

John Benedict said that the facility is going to be a “state of the art” facility and there will be a 95-98% reduction in emissions.

Division of Water and Waste Management

Bill Brannon, Assistant Director, presented the following rule:

47CSR26 - Water pollution control permit fee schedules.

Rick Roberts asked if the 50% increase in fees would be used to provide direct assistance to municipalities or would it be used only for agency paperwork?

Bill Brannon responded that the 50% fee increase will provide additional support for municipalities which otherwise is not currently available and that there will probably be a mixture of direct assistance and paperwork provided by the two additional FTE's paid for by the 50% fee increase.

Lisa Dooley stated she shares many of the same concerns that Mr. Roberts expressed and that she believes municipalities have to pass along fee increases to the public and for that reason her organization may not support the rule.

Bill Raney wanted to know if this was the first time this was proposed? Bill Brannon informed him that this was the first official time that the fee increase was proposed.

Bill Raney along with Lisa Dooley and Jackie Hallinan believe that rule information should be sent to them sooner so they can get this information to their constituents for comments.

Mike Dorsey, Assistant Director presented the following rules:

33CSR20 - Hazardous Waste Management

No comments by the advisory committee.

33CSR1 - Solid Waste Management Rule

Lisa Dooley wanted to know if the only change being made to Class D Permits are to limit expansion of the facilities. Mike Dorsey replied that the changes do limit the siting of these facilities.

Jackie Hallinan asked what recourse a person would have to object to the

cost of a background investigation. Mike Dorsey replied the person could appeal to the Environmental Quality Board.

Lisa Dooley wanted Mike Dorsey to describe the sewage sludge provisions. Mike said the revisions recognize that there other types of sludge that are as beneficial as sewage sludge.

Division of Mining and Reclamation

Lewis Halstead, Assistant Director presented the following rule:

47CSR30 - WV/NPDES Rules for Coal Mining Facilities

Bill Raney wanted to know the number of Inspectors and Inspectible units.

DEP will provide Mr. Raney with this information.

38CSR2 - West Virginia Surface Mining Reclamation Rule

Rick Roberts asked if the revisions would relax the compaction requirements in all cases or just for the forestry use.

Bill Raney asked what is going to happen to the incidental coal provision

Lewis Halstead responded it will be available for government financed projects. Other projects will have to get a full permit.

Bill Raney asked why is the agency revising the forestry requirement? Is there a problem with the exciting requirements?

Lewis Halstead responded the agency is trying to improve forestry land use.

Bill Raney also asked why companies are being required to use these new forestry provisions when they are using alternative materials?

Lewis Halstead responded the faster the company established a canopy of trees the better, it would be.

Bill Raney also request concern about the maximum bond on contemporaneous reclamation and why is it necessary. Bill Raney stated OSM does not have a contemporaneous reclamation standard. Charlie Sturey responded OSM never

approved the deletion of this language and so the agency proposes to keep it in the rule.

Bill Raney asked about the proposed changes in inspection frequency for revoked permits?

Lewis Halstead responded OSM has certain criteria for inspections to identify if there are any health & safety issues. He also said that the rule tracks the federal counterpart regulation with regard to public notice procedures.

Larry Harris made a general comment about valley fills, he was opposed to filling in the headwaters on streams, especially trout streams.

Larry Harris asked if we have any idea of the number of streams impacted?

Lewis Halstead responded the recent Environmental Impact Statement (EIS) stated there are currently 724 miles impacted by valley fills.

Larry Harris wanted to know if DEP is monitoring to see what impacts there are downstream waters and express that there are long range-cumulative affects on such waters.

Rick Roberts asked about OSM's role in the program.

Lewis Halstead said OSM has alternate oversight program and referred to a court ruling that said the state could not implement it's rules until OSM approves them.

Other Business

Bill Raney inquired if the agency was suppose to be doing a annual report for the council. Secretary Timmermeyer stated that a report is required and that the DEP would assist the council with its efforts.

Bill Raney also asked if there is a way to keep the council informed of amendments to the rules made later in the process.

Joe Dawley responded that the agency would try to keep the council informed of any amendments at its quarterly meetings.

Jackie Hallinan stated that the DEP has had numerous leaders in the past - she feels that DEP could utilize the advisory council members more.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Air Quality

Address: 7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

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

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

3. Objectives of these rules: The U.S. Environmental Protection Agency promulgated standards for hazardous waste incinerators, cement kilns and light aggregate kilns on September 30, 1999, and subsequently promulgated three rules that revised these regulations: a Direct Final Rule published on July 3, 2001, an interim Standards Rule published on February 13, 2002, and a Final Amendments Rule published on February 14, 2002. These standards were included in 45CSR25, previously filed and made effective July 1, 2003. The purpose of this rule revision is to incorporate by reference the recent technical correction of the rule finalized in 67 Federal Register 77687 (December 19, 2002). In addition, the proposed rule changes are required to maintain consistency with the Division of Water and Waste Management's

rule (33CSR20) and with the federal regulations. The consistency of 45CSR25, 33CSR20 and federal regulations is important for final authorization of the WV State RCRA Hazardous Waste Management Program.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

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

C. Economic Impact on Citizens/Public at Large.

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

Date: _____

Signature of Agency Head or Authorized Representative

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: July 29, 2003

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Air Quality
7012 MacCorkle Avenue, S.E.
Charleston, WV 25304-2943
Phone No.: 926-3647

LEGISLATIVE RULE TITLE: 45CSR25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

1. Authorizing statute(s) citation W. Va. Code §22-5-4 and §22-18-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 11, 2003

b. What other notice, including advertising, did you give of the hearing?
Class I Legal Advertisement; Charleston Daily Mail and Charleston Gazette
Copy of Public Notice sent to DAQ mailing list
Public Notice placed on DAQ's web site

c. Date of Public Hearing(s) *or* Public Comment Period ended:
Public hearing held and Public Comment Period Ended - July 15, 2003

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)

July 29, 2003

- 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
7012 MacCorkle Avenue, S.E.
Charleston, WV 25304

Phone No.: (304) 926-3647 Fax: (304) 926-1713

E-mail: jbenedict@dep.state.wv.us

- 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 _____

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

RECEIVED

03 JUL 22 PM 3:17

SERIES 25
TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE
TREATMENT, STORAGE, OR DISPOSAL FACILITIES

§45-25-1. General.

1.1. Scope.

1.1.a. The intent and purpose of this rule is to establish a program of regulation over air emissions from 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. 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.b. The requirements of this rule apply to all owners and operators of hazardous waste treatment, storage, and disposal facilities as provided in the federal rules that are incorporated by reference herein.

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 such manner or amount as to cause or contribute to statutory air pollution. Neither does it exempt nor excuse anyone 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 Chapter 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 filed pursuant to this rule 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~~ et seq. and 22-18-1 et seq.

1.3. Filing Date. -- ~~April 21, 2003~~

1.4. Effective Date. -- ~~July 1, 2003~~

1.5. Incorporation By Reference.

1.5.a. This rule incorporates by reference the provisions contained in the Code of Federal Regulations as listed in Table 25-A. Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will for purposes of this rule, be construed as that version which was in effect as of July 1, ~~2001~~ 2002.

1.5.b. This rule also incorporates by reference the provisions contained in 33 CSR 20, effective July 1, ~~2003~~ 2004, except for any provisions in 33 CSR 20 which incorporate by reference the Code of Federal Regulations.

1.5.c. This rule also incorporates by reference the provisions of 40 CFR Parts ~~264, 265, 266~~ and 270 as amended and finalized ~~66~~ Federal Register 35087 (July 3, 2001), ~~67~~ Federal

~~Register 6792 (February 13, 2002) and 67 Federal Register 6968 (February 14, 2002)~~ 67 Federal Register 77687 (December 19, 2002).

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 16, 2002, and which became effective July 1, 2002.

§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. "BACT", 'Best Available Control Technology' means an emissions limitation 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 such 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. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, 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. "EPA" means the United States Environmental Protection Agency.

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

2.11. "Infectious Medical Waste" shall have the meaning ascribed to it in 64 CSR 56 "Infectious Medical Waste", (July 1, 1999), promulgated by the 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 Incinerator" means an incinerator used to thermally treat infectious medical waste.

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 of this rule. To the extent of any inconsistency with 40 CFR Part 270, the specific provisions contained herein shall control.

2.16. "Secretary" means the Secretary of the West Virginia Department of Environmental Protection or such 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. 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 33 CSR 20 "Hazardous Waste Management Regulations" governing the State Hazardous Waste Management Act.

§45-25-3. Adoption By Reference.

3.1. Definitions, lists, tables, appendices, conditions, or requirements from 33 CSR 20 "Hazardous Waste Management Rule", effective July 1, ~~2003~~ 2004, are hereby adopted by reference, except for any provisions in 33 CSR 20 which incorporate by reference the Code of Federal Regulations.

3.1.a. In case of a conflict between the Division of Air Quality and the ~~Office~~ 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 provisions contained in the Code of Federal Regulations, effective July 1, ~~2001~~ 2002, as listed in Table 25-A, are hereby adopted by reference, 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.

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. Facility Requirements.

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

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

4.1.b. Prevention of Significant Deterioration (PSD) Program under 45CSR14 or the Federal Clean Air Act;

4.1.c. Nonattainment program under West Virginia DEP, Division of Air Quality or the Federal Clean Air Act and 45CSR19;

4.1.d. National Emission Standards for Hazardous Air Pollutants (NESHAP) preconstruction approval under 45CSR15, 45CSR34 or the Federal Clean Air Act;

4.1.e. Standards of Performance for New Stationary Sources under 45CSR16 or the Federal Clean Air Act; 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 shall 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 such 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 such 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 such 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

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 of this rule and shall 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 regulation. However, mixtures of infectious medical waste and hazardous waste listed in 40 CFR 261 Subpart D are subject to the requirements of this rule and the owner and operator of such a facility shall design, construct and operate the facility in accordance with all other applicable regulations promulgated by the Secretary including, but not limited to, 45 CSR 6 and 45 CSR 13.

§45-25-5. Permit Process.

5.1. Pre-application Public Meeting and Notice

5.1.a. Applicability. The requirements of this section 5.1 shall apply to West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. The requirements of this

section shall also apply to West Virginia hazardous waste management Part B permit applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a Class 3 permit modification (See 40 CFR 270.42 for a description of permit modifications). The requirements of this section 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 subsection 5.1.b of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency 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 permitting agency 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 subsection 5.1.d.2 of this section, 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 such 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 subsection 5.1.d.2 of this section. 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 subsection 5.1.d.2 of this section, 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.

5.1.d.1.D. A notice to the permitting agency. The applicant shall send a copy of the newspaper notice to the permitting agency 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 subsection 5.1.d.1 of this section 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 this section 5.2 shall apply to all West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to hazardous waste management Part B permit applications seeking renewal of permits for such units upon the expiration of the existing permit. The requirements of this section 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. The Secretary shall provide public notice as required in this section 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 5.8.d.1.D, and

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.

5.2.b.4. Any person otherwise entitled to receive notice under subsection 5.2.b of this rule 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 permitting agency'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 section 5.2.b of this section, 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 permitting agency's office.

5.3. Information Repository.

5.3.a. Applicability. The requirements of this section apply to all applications 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 section 5.3.b of this section.

5.4. Application for a Permit.

5.4.a. Any person who requires a permit under this rule shall complete, sign, and submit to the Secretary an application for each permit required under this rule. 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. Request for such 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 5.4.b of this section.

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;

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 shall 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 section 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 under this section, 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 under this section, 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 section 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 any draft permit prepared under this section. 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, and/or disposal and other permit conditions under 40 CFR §270.30.

5.6.d. All draft permits prepared by the Secretary under this section shall be accompanied by a fact sheet if required under subsection 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.

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.

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 section 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 section 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 section 5.8.a of this section

shall be given 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 or 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 public in the public press and in such publications as 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 such request.)

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

5.8.d.1.E.ii. To each state agency having any authority under state law with respect to the construction or operation of such 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 effected by it, including press releases or any other forum or medium to elicit public participation.

5.8.e. All public notices. All public notices issued under this section 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; and

5.8.e.5. A brief description of the comment procedures required by sections 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 will be open for public inspection;

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 section 5.8.e of this section, 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;

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 section 5.8.e of this section, all persons identified in section 5.8.d.1.A, 5.8.d.1.B, and 5.8.d.1.C of this section 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 Hearings. During the public comment period provided under section 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 shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in section 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, such 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 section 5.8.c; whenever possible the Secretary shall schedule a hearing under this section 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 section 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 section 5.8 shall automatically be extended to the close of any public hearing under this section. 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 section 5.6 of this rule.

5.11.a.2. Prepare a revised fact sheet under section 5.7 of this rule and reopen the comment period.

5.11.a.3. Reopen or extend the comment period under section 5.11 of this rule 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 section 5.8 of this rule shall define the scope of the reopening.

5.11.c. Public notice of any of the above actions shall be issued under section 5.8 of this rule.

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. For purposes of this section the 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 of this rule 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 of this rule (including any extension or reopening under subsection 5.11 of this rule);

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

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

5.14.b.5. The response to comments

required by subsection 5.13 of this rule which identified and supports any change made in the draft permit and any new material placed in the record under that subsection;

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 of this rule, 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 records, reports, or information and any permit, permit applications, 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 such 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 such records as confidential pursuant to W.Va. Code §§22-18-1-et seq. and W. Va. Code 22-5-1-et seq.

5.15.b. It shall be the responsibility of the person claiming any information as confidential under the provision of subsection 5.15 of this rule 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. 22-5-1 et seq.

§45-25-6. Exclusions and Exemptions.

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

6.2. Except for recyclable materials exempt pursuant to section 3 of 33CSR20, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of section 4 of this rule.

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 from the provisions of this rule. These provisions include 40 CFR §§264.1030(d), 264.1050(g), 264.1080(e), 265.1030(c), 265.1050(f), and 265.1080(e).

§45-25-7. Application Fees.

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 said application a money order or cashier's check payable to the "Air Pollution Control Fund" of the State Treasury. Such fee shall be determined by the schedule set forth below:

<u>Activity</u>	<u>Fees</u>
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

All fees required under this section shall be in

addition to fees required under any other rule of the West Virginia ~~Division~~ Department of Environmental Protection.

§45-25-8. Inconsistency Between Rules.

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

TABLE 25-A

<u>Item No.</u>	<u>CFR No.</u>	<u>Part No.</u>	<u>Subpart No.</u>	<u>Title</u>
1.	40 CFR	- 264, 265	- O	- Incinerator
2.		- 270.19	- B	- Specific Requirements for Incinerators
		- 270.42	- D	- Permit Modification at the Request of the Permittee
			- Appendix	- Appendix I
3.		- 270.62	- F	- Hazardous Waste Incinerator Permits
4.		- 270.72	- G	- Changes During Interim Status
5.	40 CFR	- 264	- X	- Miscellaneous Units
6.		- 270.23	- B	- Specific Requirements for Miscellaneous Units
7.	40 CFR	- 264, 265	- AA	- Air Emission Standards for Process Vents
8.		- 270.24	- B	- Specific Requirements for for Process Vents
9.	40 CFR	- 264, 265	- BB	- Air Emission Standards for Equipment Leaks
10.		- 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

<u>Item No.</u>	<u>CFR No.</u>	<u>Part No.</u>	<u>Subpart No.</u>	<u>Title</u>
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(a)(1)(i) & 262.34(a)(1)(ii)	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.

a separate form to request the individual's TIN or incorporate the request into other forms customarily used by the institution or insurer, such as admission or enrollment forms or financial aid applications.

(4) *Failure to furnish TIN.* The section 6723 penalty may apply to any individual who is required (but fails) to furnish his or her TIN to an institution or insurer. See section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(f) *Effective date.* The rules in this section apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003.

PART 301—PROCEDURE AND ADMINISTRATION

4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

5. Section 301.6011-2 is amended as follows:

1. In paragraph (b)(1), first sentence, add the language "1098-T," immediately after the language "1098-E,".

2. Revise paragraph (g)(3).
The revision reads as follows:

§ 301.6011-2 Required use of magnetic media.

* * * * *

(g) * * *
(3) This section applies to returns on Forms 1098-E, "Student Loan Interest Statement," and 1098-T, "Tuition Statement," filed after December 31, 2003.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

7. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current Control OMB No.
1.6050S-1	1545-1678

CFR part or section where identified and described	Current Control OMB No.
David A. Mader, Assistant Deputy Commissioner—Internal Revenue. Approved: December 12, 2002. Pamela F. Olson, Assistant Secretary of the Treasury. [FR Doc. 02-31915 Filed 12-18-02; 8:45 am] BILLING CODE 4830-01-P	

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 270

[FRL-7424-2]

RIN 2050-AE79

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors-Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical correction.

SUMMARY: On September 30, 1999, EPA promulgated regulations to control emissions of hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes. EPA subsequently promulgated three rules that revised these regulations: a Direct Final Rule published on July 3, 2001, an Interim Standards Rule published on February 13, 2002, and a Final Amendments Rule published on February 14, 2002. In today's action, we are correcting technical errors in those regulations.

EFFECTIVE DATE: This rule is effective on December 19, 2002.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 4 pm, Eastern Standard Time. For more information about this technical correction, contact Michael Galbraith at 703-605-0567, or galbraith.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

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- B. Conforming Change to the Hydrochloric Acid and Chlorine Gas Emission Standard for New Lightweight Aggregate Kilns
- C. Conforming Change to Delete the Minimum Power Requirement for Ionizing Wet Scrubbers
- D. Conforming Change to Delete the Requirement to Include a Carbon Bed Testing Schedule in the Performance Test Plan
- E. Conforming Changes to the Combustion System Leak Requirement
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- G. Conforming Changes to the RCRA Permitting Requirements
- H. Conforming Change to the Limit on Waste Feedrate for Compliance with the D/F Emission Standard
- I. Conforming Change to the Limit on Maximum Ash Feedrate for Incinerators
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- III. Good Cause Exemption
- IV. Rationale for Immediate Effective Date
- V. Analytic and Regulatory Requirements

I. What Are the Reasons and Basis for Today's Corrections?

The Agency has received comments from the regulated community and States requesting clarification of certain aspects of the September 30, 1999 Rule (64 FR 52828) as revised by three subsequent rules: the July 3, 2001 Direct Final Rule (66 FR 35087), the February 13, 2002 Interim Standards Rule (67 FR 6792), and the February 14, 2002 Final Amendments Rule (67 FR 6968). Today's technical corrections respond to these comments.

II. What Corrections Are We Making to the Standards?

A. Sources That Comply Early Are Not Required To Submit the NOC Within 90 Days of Completing the Comprehensive Performance Test

In the July 3, 2001 Direct Final Rule, we revised the 1999 rule to encourage early compliance with the regulations. See 66 FR at 35098. We indicated that, in developing the 1999 rule, we did not consider situations where sources would conduct performance testing prior to the compliance date. Sources may choose to test prior to the compliance date for reasons including: (1) To begin complying with the regulations prior to the compliance date; (2) to coordinate RCRA and CAA testing; or (3) to ensure compliance with the requirement to commence the test not later than six months after the compliance date. In the Direct Final Rule, we eliminated two impediments

to early compliance: (1) The requirement to stop burning hazardous waste for sources that fail the initial comprehensive performance test if the test is conducted prior to the compliance date; and (2) the requirement for the Documentation of Compliance for sources that submit the Notification of Compliance (NOC) prior to the compliance date.

We intended to eliminate a third impediment for sources that conduct the comprehensive performance test prior to the compliance date (since the purpose of the amendments was to remove impediments to early compliance): The requirement to submit the NOC within 90 days of completion of the performance test. The deadline for submitting the NOC is intended to require sources to document compliance with the emission standards as quickly as possible after the compliance date. The deadline is not necessary for sources that intend to comply early. We inadvertently included that amendment in a proposed Final Amendments Rule, also published on July 3, 2001 (66 FR 35126), rather than the Direct Final Rule. See proposed revisions to § 63.1207(j)(1)(i) and (j)(5), 66 FR at 35153. We also inadvertently did not provide preamble language discussing that regulatory change in the proposed amendments.

We are not amending the rule exactly as we proposed, however. We conclude that we need to revise the proposed regulatory language even though we did not receive adverse comment. Although we intended the waiver of the requirement (to submit the NOC within 90 days of completing the initial comprehensive performance test) to apply only to sources that comply early, the proposed regulatory language inadvertently did not restrict eligibility to early compliers. Accordingly, we have revised the amendment to require that a source that conducts the performance test prior to the compliance date, and that takes advantage of the waiver of the requirement to submit the NOC within 90 days of completing the test, must nonetheless submit the NOC by the compliance date or 90 days after completing the test, whichever is later. This provision ensures that sources using the waiver will begin complying with the emission standards using operating parameter limits documented by a performance test well before the regulatory deadline.¹

¹ Sources are required to: (1) Begin the initial comprehensive performance test not later than six months after the compliance date; (2) to complete testing within 60 days; and (3) to submit the NOC

We have apprised key stakeholders of our intent to correct the standard to include this amendment, and did not receive adverse comment. Accordingly, we are amending § 63.1207(j) by revising (j)(1)(i) and adding (j)(5), consistent with this preamble discussion.

B. Conforming Change to the Hydrochloric Acid and Chlorine Gas Emission Standard for New Lightweight Aggregate Kilns

In the Interim Standards Rule, we explained that we were revising the hydrochloric acid/chlorine gas standard for new lightweight aggregate kilns to be 600 ppmv. See 67 FR at 6797. We failed, however, to make the corresponding change to the regulation. Therefore, in today's action, we are revising the regulation at § 63.1205(b)(6) to include the correct standard of 600 ppmv for hydrochloric acid/chlorine gas.

C. Conforming Change To Delete the Minimum Power Requirement for Ionizing Wet Scrubbers

In the Interim Standards Rule, we deleted the limit on minimum total power to an ionizing wet scrubber required under § 63.1209(m)(1)(i)(D). The limit was intended to ensure compliance with the particulate matter standard. We determined, however, that a limit on total power may not ensure that the removal efficiency will be maintained for a multistage ionizing wet scrubber. We explained that until we evaluate other compliance alternatives and promulgate new requirements, sources and permit officials should use the alternative monitoring provisions of § 63.1209(g) to identify appropriate compliance assurance controls for ionizing wet scrubbers on a site-specific basis. See 67 FR at 6802. Although we deleted the limit for compliance with the particulate matter standard, we inadvertently did not make a conforming change to delete § 63.1209(o)(3)(vi), which also requires a limit on minimum total power to an ionizing wet scrubber to ensure compliance with the total chlorine emission standard.² To conform with our stated intent to delete the limit on minimum total power to an ionizing wet scrubber, we are today deleting § 63.1209(o)(3)(vi).

within 90 days of completing the testing. Upon postmark of the NOC, sources must begin complying with the operating parameter limits demonstrated during the performance test.

² Notwithstanding, we do not believe that power input to an ionizing wet scrubber is a primary control factor for chlorine emissions; rather, power input primarily controls metals and particulate matter.

D. Conforming Change To Delete the Requirement To Include a Carbon Bed Testing Schedule in the Performance Test Plan

In the Interim Standards Rule, we deleted the requirement to establish a limit on the useful life of a carbon bed or bed segment and associated requirements to conduct testing subsequent to the comprehensive performance test to verify performance of the carbon bed. In lieu of those requirements, the revised rule requires you to monitor performance of the bed according to manufacturer's specifications to ensure the bed has not reached the end of its useful life. See 67 FR at 6803 and § 63.1209(k)(7)(i).

Although we deleted the requirement to confirm the useful life of a carbon bed by testing subsequent to the comprehensive performance test, we inadvertently did not make a conforming change to § 63.1207(f)(1)(xxi)(A). That provision requires you to include in the comprehensive performance test plan a schedule for conducting testing to verify bed performance. Accordingly, we are making that conforming change today by deleting § 63.1207(f)(1)(xxi)(A).

E. Conforming Changes to the Combustion System Leak Requirement

In the proposed Final Amendments Rule (66 FR at 35132, July 3, 2001), we proposed to make changes to §§ 63.1201(a), 63.1206(c)(5), and 63.1209(p) requiring sources to use a pressure monitor and recording frequency that is adequate to detect combustion system leak events. We also clarified that the intent of the combustion system leak requirement is to prevent fugitive emissions that originate from the combustion of hazardous waste, not fugitive emissions that originate from nonhazardous process streams. We also proposed regulatory language for these changes (see pages 35152 and 35154).

In the Final Amendment Rule, we reiterated that we were finalizing these changes. See 67 FR at 6973. We failed, however, to make the necessary regulatory changes to §§ 63.1201(a), 63.1206(c)(5), and 63.1209(p). We are, therefore, correcting these sections of the regulation by including the regulatory language that was set out in the proposed rule.

F. Conforming Changes to the Compliance Date Extension Requirements

Section 63.1206(a)(1) requires existing sources to comply with the Subpart EEE emission standards no later than

September 30, 2003, unless the Administrator or State grants an extension of time under §§ 63.6(i) or 63.1213. The § 63.1213 compliance extension may be granted for a period of up to one year and is designed to allow for the installation of pollution prevention or waste minimization measures that significantly reduce the amount and/or toxicity of hazardous wastes in the feedstream to the combustor. Section 63.6(i)(4) in the Part 63 General Provisions provides for a similar extension should a source need additional time for the installation of controls without which the source would not be able to comply with the emission standards.

Both §§ 63.1213 and 63.6(i)(4) initially required you to submit your extension request in writing no later than 12 months before the compliance date. On April 5, 2002, we amended § 63.6(i)(4)(i)(B) to allow sources to submit their extension requests no later than 120 days (four months) prior to the compliance date. See 67 FR 16582. If the need for an extension arises later than 120 days prior to the compliance date, the amendment further allows sources to request an extension, but only if the need is due to circumstances beyond the reasonable control of the source that came to light after the extension deadline but before the actual compliance date. The amendment further provided that nonfrivolous extension requests would temporarily stay the applicability of the emission standards in question until the Administrator or State grants or denies the request.

The extension provisions of §§ 63.1213 and 63.6(i)(4) are similar in intent; both allow sources to request extensions to the compliance date for the installation of controls. As discussed in the preamble to the March 23, 2001 proposed amendments to the General Provisions (66 FR 16328), we believe that most sources will complete any necessary control installations well before the compliance date; however, we recognize that situations may arise prohibiting this. Sources acting in good faith may not be able to complete the installation, testing and implementation of additional controls due to circumstances or events not of their own making. Work stoppages at a control equipment supplier's factory, shortages of skilled design and construction engineers, and shortages of available technology are some of the examples of circumstances or events that may be beyond the influence of an individual source and that could impact that source's ability to properly install control equipment and measures.

Sources that believed they would be able to meet the compliance date without an extension might be unduly penalized should any of these types of events occur within the 12 months prior to the compliance date. We do not believe that it is in the best interest of environmental protection to penalize sources that are actively improving upon their waste minimization and pollution prevention controls because of circumstances and events that are beyond their control occurring prior to the compliance date. Thus, we are making a conforming change to the § 63.1213 compliance date extension requirements to reflect the changes already put in place under § 63.6(i)(4) of the General Provisions.

We are also making a conforming change to the § 63.1213 applicability language to take into consideration the recently promulgated Subpart EEE Interim Standards Rule and our extension of the compliance date. Section 63.1213 requires that a source reasonably document if it cannot install the necessary control measures and comply with the emission standards and operating requirements within three years of the emission standards effective date. This ending phrase corresponded to the September 30, 1999 effective date of the original standards (*i.e.*, the date of publication) and to the September 30, 2002 original compliance date. On December 6, 2001, we extended the compliance date of those 1999 standards by one year, to September 30, 2003. We also promulgated negotiated Interim Standards on February 13, 2002 to temporarily replace the original 1999 standards. The Interim Standards were effective on the date of their promulgation. See 66 FR 63313 and 67 FR 6792. We did not, however, make a conforming change to § 63.1213(a) to address these changes. Therefore, in today's action, we are revising § 63.1213(a) to state that when a source submits a request for an extension, it must document that it cannot install the necessary control measures and comply with the standards and operating requirements by the compliance date.

G. Conforming Changes to the RCRA Permitting Requirements

In the proposed Final Amendments Rule, published on July 3, 2001, we proposed to clarify the applicability and introductory language in 40 CFR 270.19(e), 270.22, 270.62, and 270.66 regarding the reference to the Notification of Compliance (NOC). See 66 FR 35126. These sections currently state that once a source demonstrates compliance with the Subpart EEE standards by conducting a

comprehensive performance test and submitting a NOC, the requirements of each section no longer apply (except with respect to certain startup, shutdown, and malfunction requirements). We proposed to specify that in order for the part 270 requirements to no longer apply, the NOC must actually document compliance with the Subpart EEE standards and requirements. While we did receive public comments on other proposed changes to the RCRA permitting requirements in the July 3, 2001 action (which we are not finalizing in today's action), we did not receive any comments on our proposal to specify in part 270 that the NOC must document compliance.

Under §§ 63.1207(j) and 63.1210, sources are required to postmark and submit to the Administrator a Notification of Compliance (NOC). This notification must document compliance or noncompliance with the Subpart EEE standards and requirements. As the regulatory language of part 270 currently states, the RCRA permitting requirements no longer apply only after the source demonstrates compliance. This can only be accomplished by conducting the comprehensive performance test and submitting a NOC that documents compliance. Obviously, the submittal of a NOC that does not document compliance should not constitute an opportunity to be relieved of the RCRA combustion permitting requirements. We should also note that the applicability language in 40 CFR 264.340(b), 265.340(b), and 266.100(b) specify that those sections no longer apply only after the source demonstrates compliance by conducting a comprehensive performance test and submitting a NOC that documents compliance. Therefore, in today's action we are finalizing the correction we proposed in the July 3, 2001 notice to add documenting compliance to the part 270 applicability language.

H. Conforming Change to the Limit on Waste Feedrate for Compliance With the D/F Emission Standard

Section 63.1209(k)(4) of the rule requires you to establish a limit on the maximum waste feedrate to ensure compliance with the dioxin/furan emission standard. Commenters have brought to our attention that preamble discussion explaining the rationale for this requirement refers to a limit on the maximum hazardous waste feedrate. (64 FR at 52937, September 30, 1999) As the preamble states, we intended the limit to apply to the hazardous waste feedrate, not the feedrate of hazardous and nonhazardous waste combined.

Accordingly, we are correcting § 63.1209(k)(4) to conform with the preamble discussion.

I. Conforming Change to the Limit on Maximum Ash Feedrate for Incinerators

Section 63.1209(m)(3) requires owners and operators of hazardous waste incinerators to establish a maximum ash feedrate limit as the average of the test run averages. The preamble discussion states that you must establish a maximum 12-hour rolling average feedrate limit based on operations during the comprehensive performance test. (64 FR at 52955, September 30, 1999.) However, we failed to specify the averaging period for this limit in the regulation. We are correcting § 63.1209(m)(3) to conform with the preamble language by adding a requirement to establish the maximum ash feedrate limit based on a 12-hour rolling average.

J. Conforming Change to the Sampling and Analysis Requirements

Section 63.1209(c)(2)(v) requires you to obtain a representative sample of each feedstream to be analyzed using sampling methods described in Appendix I, Part 26, or an equivalent method. This is an incorrect cite. The correct cite is Appendix IX, Part 266. Also, please note that Appendix IX simply refers you to sampling and analysis methods published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. Thus, the sampling method for any feedstream must be either that specified in SW-846, or an equivalent method.

III. Good Cause Exemption

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment.³ EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because it merely corrects errors in the September 30, 1999 Rule (64 FR 52828), as revised by three subsequent rules: the July 3, 2001 Direct Final Rule (66 FR 35087), the February 13, 2002 Interim Standards Rule (67 FR 6792), and the February 14, 2002 Final

³ The good cause exemption in 5 U.S.C. section 553 (b) applies here, even though this is a rulemaking otherwise subject to the procedural standards set out in section 307 (d) of the Clean Air Act. See CAA section 307 (d) (1) (final sentence).

Amendments Rule (67 FR 6968). These final rules were subject to notice and comment, and the clarified regulatory language reflects the Agency's views already set out during the rulemaking and in past Agency statements (notably the applicable preambles). EPA also provided opportunity for further comment on most of these provisions by means of telephone calls and other communications with key stakeholders before issuing these amendments. Thus, EPA finds that further notice and opportunity for public participation in this action are unnecessary, and hence that good cause exists to issue the rule without further notice and further opportunities for comment.

IV. Rationale for Immediate Effective Date

Today's action does not create any new regulatory requirements; rather, it corrects errors in the September 30, 1999 Rule (64 FR 52828), as revised by three subsequent rules: The July 3, 2001 Direct Final Rule (66 FR 35087), the February 13, 2002 Interim Standards Rule (67 FR 6792), and the February 14, 2002 Final Amendments Rule (67 FR 6968). For this reason, we find that good cause exists under 5 U.S.C. 553(d)(3) to waive the requirement that regulations be published at least 30 days before they become effective.

V. Analytic and Regulatory Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the Agency has made a "good cause" finding (see section III above) that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will 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 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This interpretive clarification and technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Our compliance with these statutes and Executive Orders for the underlying rules are discussed in the July 3, 2001, the February 13, 2002, and February 14, 2002 Federal Register notices.

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

Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of December 19, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 63

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

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: December 12, 2002.

Marianne L. Horinko,
Assistant Administrator, Office of Solid Waste and Emergency Response.

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 EMISSION 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 63.1201 is amended by revising the definition of "Instantaneous monitoring" in paragraph (a) to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Instantaneous monitoring for combustion system leak control means detecting and recording pressure, without use of an averaging period, at a frequency adequate to detect combustion system leak events from hazardous waste combustion.

3. Section 63.1205 is amended by revising paragraph (b)(6) to read as follows:

§ 63.1205 What are the standards for hazardous waste burning lightweight aggregate kilns?

* * * * *

(b) * * *

(6) Hydrochloric acid and chlorine gas in excess of 600 parts per million by volume, combined emissions, expressed as hydrochloric acid equivalents, dry basis and corrected to 7 percent oxygen; and

* * * * *

4. Section 63.1206 is amended by revising paragraph (c)(5)(ii) to read as follows:

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

* * * * *

(c) * * *

(5) * * *

(ii) You must specify in the performance test workplan and Notification of Compliance the method that will be used to control combustion system leaks. If you control combustion system leaks by maintaining the combustion zone pressure lower than ambient pressure using an instantaneous monitor, you must also specify in the performance test workplan and Notification of Compliance the monitoring and recording frequency of the pressure monitor, and specify how the monitoring approach will be integrated into the automatic waste feed cutoff system.

* * * * *

5. Section 63.1207 is amended by:

a. Revising paragraph (f)(1)(xxi).

b. Revising paragraph (j)(1)(i).

c. Adding paragraph (j)(5)

The revisions and addition read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(f) * * *

(1) * * *

(xxi) If your source is equipped with a carbon bed system, and you elect not to specify and use the brand and type of carbon used during the comprehensive performance test, you must include in the comprehensive performance test plan key parameters that affect carbon adsorption, and the operating limits you establish for those parameters based on the carbon used during the performance test, as required by § 63.1209(k)(7)(ii).

* * * * *

(j) * * *

(1) * * *

(i) Except as provided by paragraphs (j)(4) and (j)(5) of this section, within 90 days of completion of a comprehensive performance test, you must postmark a Notification of Compliance documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under § 63.1209.

* * * * *

(5) *Early compliance.* If you conduct the initial comprehensive performance test prior to the compliance date, you must postmark the Notification of Compliance within 90 days of

completion of the performance test or by the compliance date, whichever is later.

* * * * *

6. Section 63.1209 is amended by:

a. Revising paragraph (c)(2)(v).

b. Revising paragraphs (k)(4)

introductory text, and (k)(4)(i).

c. Revising paragraph (m)(3).

d. Removing paragraph (o)(3)(vi).

e. Revising paragraph (p).

The revisions read as follows:

§ 63.1209 What are the monitoring requirements?

* * * * *

(c) * * *

(2) * * *

(v) The sampling method which you will use to obtain a representative sample of each feedstream to be analyzed using sampling methods described in appendix IX, part 266 of this chapter, or an equivalent method; and

* * * * *

(k) * * *

(4) *Maximum hazardous waste feedrate.* (i) You must establish limits on the maximum pumpable and total (pumpable and nonpumpable) hazardous waste feedrate for each location where waste is fed.

* * * * *

(m) * * *

(3) *Maximum ash feedrate.* Owners and operators of hazardous waste incinerators must establish a maximum ash feedrate limit as a 12-hour rolling average based on the average of the test run averages.

* * * * *

(p) *Maximum combustion chamber pressure.* If you comply with the requirements for combustion system leaks under § 63.1206(c)(5) by maintaining the maximum combustion chamber zone pressure lower than ambient pressure to prevent combustion systems leaks from hazardous waste combustion, you must perform instantaneous monitoring of pressure and the automatic waste feed cutoff system must be engaged when negative pressure is not adequately maintained.

* * * * *

7. Section 63.1213 is amended by revising paragraphs (a) and (b)(1) introductory text to read as follows:

§ 63.1213 How can the compliance date be extended to install pollution prevention or waste minimization controls?

(a) *Applicability.* You may request from the Administrator or State with an approved Title V program an extension of the compliance date of up to one year. An extension may be granted if you can reasonably document that the

installation of pollution prevention or waste minimization measures will significantly reduce the amount and/or toxicity of hazardous wastes entering the feedstream(s) of the hazardous waste combustor(s), and that you could not install the necessary control measures and comply with the emission standards and operating requirements of this subpart by the compliance date.

(b) * * * (1) You must make your requests for an (up to) one-year extension in writing in accordance with § 63.6(i)(4)(B) and (C). The request must contain the following information:

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

8. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

9. Section 270.19 is amended by revising paragraph (e) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

(e) When an owner or operator demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

10. Section 270.22 is amended by revising the introductory text to read as follows:

§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous waste.

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter

(*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

11. Section 270.62 is amended by revising the introductory text to read as follows:

§ 270.62 Hazardous waste incinerator permits.

When an owner or operator demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

12. Section 270.66 is amended by revising the introductory text to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this

chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

* * * * *

[FR Doc. 02-31903 Filed 12-18-02; 8:45 am] BILLING CODE 6560-50-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 50

RIN: 0991-AB21

HHS Exchange Visitor Program; Request for Waiver of the Two-Year Foreign Residence Requirement

AGENCY: Office of the Secretary, HHS. ACTION: Interim final rule with opportunity for public comment.

SUMMARY: This interim final rule with comment period amends the regulations governing requests for the waiver of the two-year foreign residence requirement of the Health and Human Services (HHS) Exchange Visitor Program. These revisions permit institutions and health care facilities to submit to HHS requests for waiver of the two-year home-country physical presence requirement for physician Exchange Visitors to deliver health care services in underserved areas.

DATES: These interim final regulations are effective December 19, 2002. As discussed below, comments on the regulations are invited but must be received by February 3, 2003.

ADDRESSES: Written comments should be addressed to Dr. William R. Steiger, Office of Global Health Affairs, 200 Independence Ave., SW., Room 639-H, Washington, DC 20201. All comments received will be available for public inspection and copying at the above address, weekdays (Federal holidays excepted) between the hours of 9:00 a.m. and 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. William R. Steiger, Office of Global

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

ORIGINAL

In the matter of:

PUBLIC HEARING ON PROPOSED REVISIONS TO LEGISLATIVE RULE

45 CSR 25 "TO PREVENT AND CONTROL AIR POLLUTION FROM
HAZARDOUS WASTE TREATMENT, STORAGE OR
DISPOSAL FACILITIES"

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Air Quality, Conference Room, 7012 MacCorkle Avenue, S.E., Charleston, West Virginia, commencing at 6:02 p.m., on the 15th day of July, 2003, pursuant to notice.

MISSY L. YOUNG, C.C.R.
POST OFFICE BOX 13221
SISSONVILLE, WEST VIRGINIA 25360
(304) 984-2300

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

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

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

Given under my hand and official seal this 24th day of July, 2003.

Missy L. Young, C.C.R.

Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

45CSR25

TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

RESPONSE TO COMMENTS

On June 13, 2003, the Division of Air Quality (DAQ) commenced the public comment period and subsequently held a public hearing on July 15, 2003 to accept oral comments on the proposed rule, 45CSR25. Written comments were also accepted through 6:00 PM on Monday, July 15, 2003. No person verbally commented at the public hearing concerning proposed rule 45CSR25. No commenter submitted substantive written comments regarding proposed rule 45CSR25. Therefore, no response is required by the Division.