

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

Form #4

Do Not Mark In this Box

**FILED**

OCT 27 2 03 PM '95

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

DIVISION OF ENVIRONMENTAL PROTECTION  
AGENCY: OFFICE OF AIR QUALITY TITLE NUMBER: 45CSR25

CITE AUTHORITY WV CODE §§22-5-1 et seq. & §§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 NEW RULE BEING PROPOSED: \_\_\_\_\_

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

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

  
G. DALE FARLEY  
CHIEF, OFFICE OF AIR QUALITY

4.80



**BUREAU OF ENVIRONMENT**  
10 McJunkin Road  
Nitro, WV 25143-2506

GASTON CAPERTON  
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.  
COMMISSIONER

October 26, 1995

Ms. Judy Cooper  
Director, Administrative Law Division  
Office of the Secretary of State  
Capitol Complex  
Charleston, West Virginia 25305

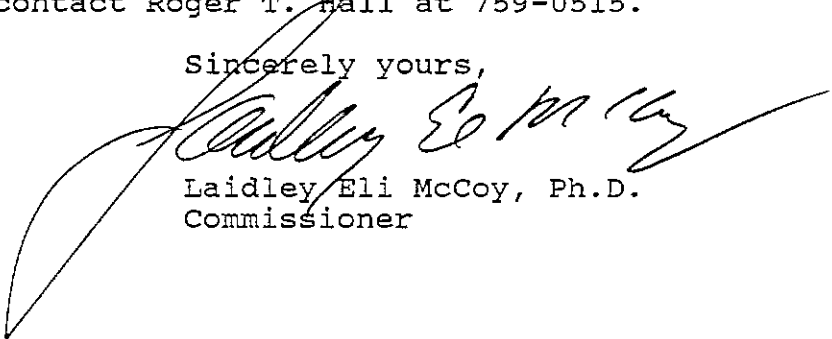
RE: 45-CSR-25 - "To Prevent and Control Air Pollution From  
Hazardous Waste Treatment, Storage, or  
Disposal Facilities"

Dear Ms. Cooper:

This is to advise you that I am giving approval for of the filing of the above-captioned rule as a modification to a proposed rule with your Office and Legislative Rule-Making.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Roger T. Hall at 759-0515.

Sincerely yours,

  
Laidley Eli McCoy, Ph.D.  
Commissioner

LEM:cc

Attachment

FILED

45CSR25

Nov 3 2 27 PM '95

TITLE 45  
LEGISLATIVE RULES

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

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

§45-25-1. General.

1.1. Scope.

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.

b. The requirements of this rule apply to all owners and operators of hazardous waste treatment, storage, and disposal facilities, including but not limited to:

A. Generators accumulating hazardous waste on-site for periods of less than ninety (90) days;

B. Owners and operators of wastewater treatment units as defined in this rule; and

C. Owners and operators which burn hazardous wastes in incinerators, boilers and industrial furnaces in order to destroy the wastes.

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.

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 Director that enforcement shall be implemented in accordance with W. Va. Code §§22-18-1 et seq., where practicable.

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., and this rule.

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Incorporation By Reference.

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~~June 1, 1994~~5~~.

b. This rule also incorporates by reference the provisions contained in 47 CSR 35, effective ~~July~~June 1, 1994~~5~~.

#### **§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' shall have 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 Director, 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 Director 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. "Chief" means the Chief of the West Virginia Office of Air Quality, Division of Environmental Protection.

2.7.8. "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.

2.8.9. "Director" means the Director of the West Virginia Division of Environmental Protection or his or her designated representative.

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

2.10.11. "EPA" means the United States Environmental Protection Agency.

2.11.12. "Infectious Medical Waste" shall have the meaning ascribed to it in 64 CSR 56 "Infectious Medical Waste", (June 11, 1993), promulgated by the Division of Health.

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

2.13.14. "Pathological Waste Incinerator" means an incinerator used to thermally treat infectious medical waste. ~~Note. The owner or operator of a pathological waste incinerator is not subject to the requirements of this regulation. However, such Pathological waste incinerator must be designed, constructed, and operated to meet all other applicable regulations promulgated by the Director including, but not limited to, 45 CSR 6 and 45 CSR 13.~~

~~2.14~~15. "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~~16. "Steady State" means that all conditions at all points in the thermal treatment process are in stable, normal operating conditions.

~~2.16~~17. All 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 W. Va. Code §§22-18-1 et seq., or 47 CSR 35 "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 47 CSR 35 "Hazardous Waste Management Regulations", effective ~~July~~June 1, 1994~~5~~ are hereby adopted by reference.

a. In case of a conflict between the Office of Air Quality and the Office of Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Director has final administrative authority to resolve the conflict.

3.2. The provisions contained in the Code of Federal Regulations (~~July~~June 1, 1994~~5~~), as listed in Table 25-A, are hereby adopted by reference, with the following modifications:

a. Whenever the term "United States" is used it shall also mean the State of West Virginia.

b. Whenever the terms "Administrator" or "Regional Administrator", "The Assistant Administrator for Solid Waste and Emergency Response" or "Director" is used, the term means the Director of the West Virginia Division of Environmental Protection.

c. Whenever the term "Environmental Protection Agency" is used in 40 CFR 266, the term also means the West Virginia Division of Environmental Protection.

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:

- a. Hazardous Waste Management Program under RCRA and 47 CSR 35;
- b. Prevention of Significant Deterioration (PSD) Program under 45 CSR 14 or the Federal Clean Air Act;
- c. Nonattainment program under West Virginia DEP, Office of Air Quality or the Federal Clean Air Act and 45 CSR 19;
- d. National Emission Standards for Hazardous Pollutants (NESHAP) preconstruction approval under 45 CSR 15 or the Federal Clean Air Act;
- e. Standards of Performance for New Stationary Sources under 45 CSR 16 or the Federal Clean Air Act; and
- 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 Director 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:

- a. Produce uncontrolled toxic mists, fumes, dust or gases in sufficient quantities to threaten human health or the environment, and
- b. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion.

~~4.5. Owners and operators of all hazardous waste tanks shall have treatment process controls, emission controls, and safety or emergency procedures as are necessary to protect human health and the environment from toxic or otherwise harmful fumes, mists, or gases resulting from:~~

~~a. Volatilization of wastes stored or treated in the tank;~~

~~b. Chemical reactions in the tank, either routine or resulting from process upsets;~~

and

~~c. Physical agitation or other forms of treatment in the tank.~~

~~4.6. Tanks used to treat or store hazardous waste containing liquid waste whose true vapor pressure is greater than 10.5 kilopascals (1.52 psia) at 25°C and 760 mmHg shall be equipped with an emission control system meeting the following requirements:~~

~~a. Storage or treatment in open (uncovered) tanks is prohibited.~~

~~b. External floating roofs shall be equipped with double mechanical seals.~~

~~c. Fixed roof tanks shall be equipped with an internal floating roof with appropriate seals, a vapor recovery system, or an equally effective alternative emission control system approved by the Director.~~

~~4.7. Emissions of hazardous waste whose true vapor pressure is greater than 10.5 kilopascals (1.52 psia) at 25°C, 760 mmHg shall be controlled during loading or unloading of tank trucks, railroad tank cars, and barges by the methods listed as follows:~~

~~a. Venting all displaced vapors and gases to a vapor recovery system or an alternative emission control system approved by the Director;~~

~~b. Providing a means to prevent liquid drainage from the loading (unloading) device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and~~

~~c. Equipping all loading and vapor lines with fittings which make vapor tight connections that close automatically when disconnected.~~

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 standard requirements of 40 CFR 264 and 265 including but not limited to subpart CC.

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 standard requirements of 40 CFR 264 and 265 including but not limited to subparts AA, BB and CC.

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 standard requirements of 40 CFR 264 and 265 including but not limited to subpart CC.

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.

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

~~4.9.10.~~ Hazardous waste landfills must be covered or otherwise managed to prevent wind dispersal of the waste.

~~4.10.11.~~ 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:

- a. The volume and physical and chemical characteristics of the waste in the facility, including its potential for volatilization and wind dispersal;
- b. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;
- c. The potential for health risks caused by human exposure to waste constituents;
- d. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
- e. The potential for interference with the enjoyment of life or property; and
- f. The persistence and permanence of such potential adverse effects.

~~4.11.12.~~ 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:

- a. Process turn-arounds;
- b. Cleaning of process equipment;
- c. Planned process shutdowns; and
- d. Tank truck, railroad tank car, and barge cleaning.

4.12.13. a. The Director 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 Director may require the following data from the permit applicant:

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

- (a) Mass emission rates from the stack, and
- (b) Concentration in the gas stream exiting the stack; and

B. Air dispersion estimates for those substances, including:

- (a) Meteorological data, and
- (b) Description of the air dispersion models, and
- (c) Assumptions underlying the air dispersion models used; and

C. Expected human and environmental exposure, including:

- (a) Topographic considerations,
- (b) Population distributions,
- (c) Population activities, and
- (d) Modes, intensity, and duration of exposure; and

D. Consequences of exposure, including:

- (a) Dose-response curves for carcinogens,
- (b) Health effects based on human or animal studies for other toxic constituents,
- (c) Potential for accumulation of toxic constituents in the human body, and
- (d) Statements of expected risk to individuals or populations.

~~4.13.~~4.14. Emergency Permit. Notwithstanding any other provision in 40 CFR 270.61, in the event the Director finds an imminent and substantial danger to human health or the environment, the Director 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:

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

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

c. Shall clearly specify the hazardous wastes to be received, and the manner and location of the treatment, storage, or disposal;

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

e. Shall be accompanied by public notice as described under Section 7 of this rule and shall include the following:

A. Name and address of the office granting the emergency authorization,

B. Name and location of the permitted hazardous waste management facility,

C. A brief description of the wastes involved,

D. A brief description of the action authorized and reasons for authorizing it,

E. Duration of the emergency permit; and

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 Director, including, but not limited to, 45 CSR 6 and 45 CSR 13.

**§45-25-5. Exclusion and Exemptions.**

5.1. Wastes and/or materials excluded in 47 CSR 35, are also excluded from the requirements of this rule, except that mixtures of domestic or industrial sewage and hazardous wastes which pass through a sewer system to a privately owned or publicly owned treatment works are subject to the requirements of this rule.

5.2. Except for recyclable materials exempt pursuant to Section 3 of 47 CSR 35, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of Section 4 of this rule.

**§45-25-6. Confidential Information.**

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

**§45-25-7. Public Notice.**

Public notice of the preparation of a draft permit shall be given by the methods contained in 47 CSR 35 Section 12. In addition, the owner and operator shall place a Class I legal advertisement in a newspaper of general circulation in accordance with applicable provisions of WV CSR §§45-13-6.1., 6.2., and 6.3.

**§45-25-8. Application Fees.**

8.1. Any person who applies for a permit for the construction and/or operation of a hazardous waste treatment, storage, or disposal facility shall submit as part of said application a money order or cashier's check payable to the "Hazardous Waste Management Fund" of the State Treasury. Such fee shall be determined by the schedule set forth below:

	<b>ACTIVITY</b>	<b>FEES</b>
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	\$2,500
b.	Major Modifications or Renewals of Permits for Hazardous Waste Management Facilities	\$1,000

All fees required under this section shall be in addition to fees required under any other rule of the West Virginia Division of Environmental Protection.

**§45-25-9. Inconsistency Between Rules.**

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

## 45CSR25

TABLE 25-A

<u>Item No.</u>	<u>CFR No.</u>	<u>Part No.</u>	<u>Subpart No.</u>	<u>Title</u>
<u>1.</u>	40 CFR	- 264, 265	- O	- Incinerator
<u>2.</u>	Incinerators	- 270.19	- B	- Specific Requirements for
<u>3.</u>		- 270.62	- F	- Hazardous Waste Incinerator Permits
<u>4.</u>		40 CFR	- 264	- X
<u>5.</u>		- 270.23	- B	- Specific Requirements for Miscellaneous Units
<u>6.</u>	40 CFR	- 264, 265	- AA	- Air Emission Standards for Process Vents
<u>7.</u>		- 270.24	- B	- Specific Requirements for Process Vents
<u>8.</u>	40 CFR	- 264, 265	- BB	- Air Emission Standards for Equipment Leaks
<u>9.</u>		- 270.25	- B	- Specific Requirements for Equipments Leaks
<u>10.</u>	<u>40 CFR</u>	<u>- 264, 265, 270-</u>	<u>CC</u>	<u>- Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers</u>
<u>11.</u>	40 CFR	- 265	- P	- Thermal Treatment
<u>12.</u>	40 CFR	- 266	- H	- Hazardous Waste Burned in Boilers and Industrial Furnaces
<u>13.</u>		- 270.22	- B	- Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
<u>14.</u>		- 270.66	- F	- Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
<u>15.</u>	40 CFR	- 279.23	- C	- On-site Burning In Space Heater
<u>16.</u>		- 279.60	- G	- Standards for Used Oil Burners
<u>17.</u>		- 279.61		- Who Burn Off-Specification Used
<u>18.</u>		- 279.62		- Oil for Energy Recovery
<u>19.</u>		- 279.63		