



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary
Title of Position

Air Pollution Control Commission, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- () proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- (x) proposed ^{Emergency} rules and regulations superseding rules and regulations already on file;
- () notice of hearing;
- () findings and determinations;
- () rules and regulations; or
- (x) other - specify Statement of the Facts and Circumstances of Constituting the Emergencies Requiring Emergency
This filing pertains to Regulation XXV

Chapter 16 and 20
Article 20) 5E
Series XXV
Section _____
Page No. _____

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THIS DATE Oct. 28, 1983
Administrative Law Division

- (x) proposed rules and regulations are required to go to Legislative Rule Making Committee;
- () proposed rules and regulations are excluded from Legislative Rule Making Committee;

October 28, 1983
Date Submitted

[Signature]
Signature of Person Authorizing
this Filing Secretary

*Obsolet
replaced by
1/6/84 Reg. Emerg.
XXV-T*

EMERGENCY REGULATION

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Subject: Regulation XXV - "To Prevent and Control Air Pollution From Hazardous Waste, Treatment, Storage, or Disposal Facilities"

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EMERGENCY REGULATION

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Air Pollution Control Commission

Chapter 16-20 and Chapter 20-5E
Series XXV
(1983)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 10/28/03
Administrative Law Division

Subject: Regulation XXV - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"

Section 1. General.

1.01. Scope, Intent, and Purpose.

(a) It is the intent and purpose of this regulation to establish 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.

(b) 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 of the area(s) affected by such treatment, storage, or disposal. No person shall cause to be discharged into the air any hazardous waste or constituent thereof in such quantities as to cause ambient air concentrations which may be injurious to human health or which would interfere with the enjoyment of life or property.

(c) Neither compliance with the provisions of this regulation 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 undesirable levels of air contaminants. Neither does it exempt nor excuse anyone from complying with other applicable laws, ordinances, regulations, or orders of governmental entities having jurisdiction.

(d) This regulation is promulgated pursuant to Chapter 16, Article 20 and Chapter 20, Article 5E of the Code of West Virginia.

1.02. Authority.

This regulation is issued under the authority of the West Virginia Code, Chapter 16, Article 20, Section 5 and Chapter 20, Article 5E, Section 7(f). This regulation relates to West Virginia Code, Chapter 16, Article 20, and Chapter 20, Article 5E.

1.03. Filing Date.

This emergency regulation was adopted by the Commission on the 27th day of October, 1983, and filed with the Secretary of State on the 28th day of October, 1983.

1.04. Effective Date.

The effective date of this regulation is the 27th day of October, 1983.

1.05. Type.

This regulation is a legislative rule as defined in West Virginia Code, Chapter 29, Article 2.

Section 2. Definitions.

- 2.01. "Air Pollutants" shall mean solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

- 2.02. "Air Pollution", 'statutory air pollution' shall have the meaning ascribed to it in Chapter 16, Article 20, Section 2, of the Code of West Virginia, as amended.
- 2.03. "Air Pollution Control Equipment" shall mean 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.
- 2.04. "Certification" shall mean a statement of professional opinion based upon knowledge and belief.
- 2.05. "Commission" shall mean the West Virginia Air Pollution Control Commission.
- 2.06. "Constituent", 'hazardous waste constituent' shall mean a constituent identified in Appendix VIII of Section 3.00 of the DNR Regulations or constituents that caused the DNR Director to list the hazardous waste in Section 3.04 of the DNR Regulations or constituents listed in Table 1 of Subsection 3.03.05 of the DNR Regulations.
- 2.07. "CFR" shall mean the Code of Federal Regulations published by the Office of the Federal Register National Archives and Records Service, General Services Administration.
- 2.08. "Director" shall mean the Director of the West Virginia Air Pollution Control Commission.
- 2.09. "Discard" shall mean abandoned (and not used, reused, reclaimed, or recycled) by being:
- (a) Disposed of; or

(b) Burned or incinerated except where the material is being burned as a fuel for the purpose of recovering useable energy; or

(c) Physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to disposal.

2.10. "Disposal" shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.

2.11. "Disposal Facility" shall mean a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

2.12. "DNR", 'DNR Director' shall mean the West Virginia Department of Natural Resources, and the Director thereof.

2.13. "DNR Regulations" shall mean DNR Regulations governing the State Hazardous Waste Management Act.

2.14. "EPA" shall mean the United States Environmental Protection Agency.

2.15. "Hazardous Waste" shall mean a waste or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(a) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

2.16. "Incinerator" shall mean any enclosed thermal treatment device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste. Examples of incinerators are rotary kilns, fluidized beds, and liquid injection incinerators.

2.17. "Infectious Waste" shall have the meaning ascribed to it by the West Virginia Administrative Regulations Board of Health, Infectious Waste Regulations, Chapter 16-1, Series XI (1982).

2.18. "Manufacturing or Mining By-Product" shall mean a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time.

2.19. "Open Burning" shall mean the combustion, or partial combustion, of any material without the following characteristics:

(a) Control of combustion air to maintain adequate temperature for efficient combustion, and

(b) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(c) Control of emissions of the gaseous combustion products.

- 2.20. "Operator" shall mean the person(s) responsible for the overall operation of a hazardous waste treatment, storage, or disposal facility.
- 2.21. "Owner" shall mean the person who owns a hazardous waste treatment, storage, or disposal facility or part of such facility.
- 2.22. "Particulate Matter" shall mean any material, except uncombined water, that exists in a finely divided form as a liquid or solid.
- 2.23. "Pathological Incinerator" shall mean an incinerator used to thermally treat infectious waste.
- 2.24. "Person" shall mean any individual, trust, firm, joint stock company, public, private, or government corporation, partnership, association, state or federal agency, the United States government, this state or any other state, municipality, county commission, or any other political subdivision of a state or any interstate body.
- 2.25. "Solid Waste" shall mean any solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations, or from community activities which:
- (a) Is discarded or is being accumulated, stored, or physically, chemically, or biologically treated prior to being discarded; or
 - (b) Has served its original intended use and sometimes is discarded; or
 - (c) Is a manufacturing by-product and sometimes is discarded.
- 2.26. "Steady State" shall mean that all conditions at all points in the thermal treatment process are in stable, normal operating conditions.

- 2.27. "Storage" shall mean the containment of hazardous waste either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.
- 2.28. "Storage Facility" shall mean a facility or part of a facility which is used for the storage of hazardous waste except for storage by the use of containers.
- 2.29. "Tank" shall mean a stationary device designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., concrete, wood, steel, plastic) which provide structural support.
- 2.30. "Thermal Treatment" shall mean the treatment of hazardous waste in a device which uses elevated temperature as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.
- 2.31. "Totally Enclosed Treatment Facility" shall mean a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents release of any hazardous waste or any constituent thereof into the environment during treatment.
- 2.32. "Treatment" shall mean any method, technique, or process including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such

waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

2.33. "Waste" shall mean any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and any other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended, or source, special nuclear or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended.

2.34. All other words or phrases not herein defined and used in this regulation shall have the meaning as ascribed in the definitional sections, the Code, Chapter 16, Article 20 or Chapter 20, Article 5E, or the DNR Regulations governing the State Hazardous Waste Management Act.

Section 3. Criteria for Identifying Waste as a Hazardous Waste.

3.01. The following wastes are hazardous wastes:

(a) The waste is not excluded from regulations as a hazardous waste under Section 4; and

(b) It meets any of the following criteria:

(1) It is listed in Section 7 and has not been excluded from the list in Section 7 pursuant to 40 CFR 260.20 and 260.22 by the DNR Director; or

(2) It is a mixture of waste and one or more hazardous wastes listed in Section 7 and has not been excluded under 40 CFR 260.20 and 260.22 by the DNR Director; or

(3) It exhibits any of the characteristics of hazardous waste identified in Section 6.

3.02. A waste which is not excluded from regulation under Subsection 3.01 becomes a hazardous waste when any of the following events occur:

(a) In the case of a waste listed in Section 7, when the waste first meets the listing description set forth in Section 7; or

(b) In the case of a mixture of a waste and one or more listed hazardous wastes, when a hazardous waste listed in Section 7 is first added to the waste; or

(c) In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in Section 6.

3.03. Unless, and until, it meets the criteria of Subsection 3.04:

(a) A hazardous waste will remain a hazardous waste; or

(b) Any waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off), is a hazardous waste.

3.04. Any waste described in Subsection 3.03 is not a hazardous waste if it meets the following criteria:

(a) In the case of any waste, it does not exhibit any of the characteristics identified in Section 6; or

(b) In the case of a waste which is a listed waste under Section 7, contains a waste listed under Section 7, or is derived from a waste listed in Section 7, and it also has been excluded from Subsection 3.03 under 40 CFR 260.20 and 260.22 by the DNR Director.

Section 4. Exclusions.

4.01. The following materials are not wastes for purposes of this regulation:

(a) (1) Domestic sewage, and

(2) Any mixture of domestic sewage and other wastes that pass through a domestic sewer system to publicly owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a domestic sewer system; or

(b) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended.

This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharged, nor does it exclude sludges that are generated by industrial wastewater treatment; or

(c) Irrigation return flows; or

(d) Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011, et seq.; or

(e) Materials subjected to in-site mining techniques which are not removed from the ground as part of the extraction process.

4.02. The following wastes are not hazardous wastes for purposes of this regulation:

(a) Household waste, including household waste that has been collected, transported, stored, treated, disposed of, recovered, or reused. "Household waste" means any waste material (including garbage, trash, and any sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels, and motels); or

(b) Wastes generated by any of the following, and which are returned to the soil as fertilizers:

(1) The growing and harvesting of agricultural crops, and

(2) The raising of animals, including animal manures; or

(c) Mining overburden returned to the mine site; or

(d) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; or

(e) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy; or

(f) (1) Wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in Section 7 due to the presence of chromium, which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence

of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(i) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(ii) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(iii) The waste is typically and frequently managed in non-oxidizing environments,

(2) Specific wastes which meet the standard in Subsection 4.02, paragraphs (f)(1)(i), (ii) and (iii), (so long as they do not fail the test for the characteristic of EP toxicity, and do not fail the test for any other characteristic) are:

(i) Chrome (blue) trimmings and shavings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan, wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling; and

(ii) Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and

(iii) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome

tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling; and

(iv) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling; and

(v) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries; and

(vi) Wastewater treatment sludges from the production of TiO_2 pigment using chromium bearing ores by the chloride process; or

(g) Waste from the extraction, beneficiation, and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore; or

(h) Cement kiln dust waste; or

(i) Waste which consists of discarded wood or wood products which fail the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for the materials intended end use.

Section 5. Exemptions.

5.01. Hazardous wastes generated in the following units are exempt from this regulation until they exit the units in which they were generated, unless the units are surface impoundments, or unless the hazardous wastes

remain in the units more than ninety (90) days after the units cease to be operated for manufacturing, or for storage or transportation of the product or raw materials:

- (a) A product or raw material storage tank; or
- (b) A product or raw material transport vehicle or vessel; or
- (c) A product or raw material pipeline; or
- (d) A manufacturing process unit or an associated non-waste treatment manufacturing unit.

5.02. (a) Except as provided in Subsection 5.02(b), a sample of waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to the requirements of these regulations when:

- (1) The sample is being transported to a laboratory for the purpose of testing; or
- (2) The sample is being transported back to the sample collector after testing; or
- (3) The sample is being stored by the sample collector before transport to a laboratory for testing; or
- (4) The sample is being stored in a laboratory before testing; or
- (5) The sample is being stored in a laboratory after testing, but before it is returned to the sample collector; or
- (6) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court

case of enforcement action where further testing of the sample may be necessary).

(b) In order to qualify for the exemption in Subsection 5.02(a), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(1) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS) or any other applicable shipping requirements; or

(2) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(i) Assure that the following information accompanies the sample:

(a) The sample collector's name, mailing address, and telephone number; and

(b) The laboratory's name, mailing address, and telephone number; and

(c) The quantity of the sample; and

(d) The date of shipment; and

(e) A description of the sample; and

(ii) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in Subsection 5.02(a).

5.03. Hazardous waste remaining in either an empty container or an inner liner removed from an empty container (as defined below) is not subject to these regulations.

(a) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified in Subsection 3.04.04(c) of the DNR Regulations is empty if:

(1) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container (e.g., pouring, pumping, and aspirating); and

(2) (i) No more than two and one-half (2.5) centimeters (one inch) of residue remains on the bottom of the container or inner liner; and

(ii) No more than three (3.0) percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to one hundred ten (110) gallons in size, or

(iii) No more than three-tenths (0.3) percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than one hundred ten (110) gallons in size.

(b) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(c) A container or an inner liner removed from a container that has held a hazardous waste identified in Subsection 3.04.04(c) of the DNR Regulations is empty if:

(1) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate; or

(2) The container or inner liner has been cleaned by another method that has been shown in scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(3) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.

5.04. A generator is a small quantity generator in a calendar month if he generates less than 1000 kilograms of hazardous waste in that month except for those wastes identified in Subsections 5.04(c) and 5.04(d). A small quantity generator's hazardous wastes are not subject to this regulation provided the generator complies with the requirements of Subsection 3.01.04(g) of the DNR Regulations.

(a) Hazardous waste that is beneficially used or reused or legitimately recycled or reclaimed and that is excluded from regulation by subsection 5.05(a) is not included in the quantity determinations of this Subsection and is not subject to these regulations. Hazardous waste that is subject to the special requirements of Subsection 5.05(b) is included in the quantity determinations of this subsection and is subject to the requirements of this subsection.

(b) In determining the quantity of hazardous waste a person generates, a generator need not include:

- (1) His hazardous waste when it is removed from on-site storage; or
- (2) Hazardous waste produced by on-site treatment of his hazardous waste.

(c) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are fully subject to these regulations and the DNR Regulations:

- (1) A total of one kilogram of commercial chemical products and manufacturing chemical intermediates having the generic names listed in Subsection 3.04.04(e) of the DNR Regulations, and off-specification commercial products and manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in Subsection 3.04.04(e) of the DNR Regulations; or

- (2) A total of 100 kilograms of any residue or contaminated soil, water, or other debris resulting from the clean-up of a spill, into or on any land or water, of any commercial chemical products or manufacturing chemical intermediates having the generic names listed in Subsection 3.04.04(e) of the DNR Regulations, or any residue or contaminated soil, water, or other debris resulting from the clean-up of a spill, into or on any land or water, of any off-specification commercial chemical products or manufacturing chemical intermediates which if they met specifications, would have the generic names listed in Subsection 3.04.04(e) of the DNR Regulations.

(d) A small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than those set forth in Subsection 5.04(c)(1) or 5.04(c)(2), all of those accumulated wastes for which the accumulation limit was exceeded are fully subject to this regulation and the DNR Regulations. The time period specified in Subsection 6.03.05 of the DNR Regulations for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

(e) Hazardous waste subject to the reduced requirements of this subsection may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this subsection unless the mixture meets any of the characteristics of hazardous wastes identified in Section 6.

(f) If a small quantity generator mixes a waste with a hazardous waste that exceeds a quantity exclusion level of this subsection, the mixture is subject to full regulation.

5.05. (a) Except as otherwise provided in Subsection 5.05(b), a hazardous waste which meets any of the following criteria is not subject to the requirements of these regulations:

(1) It is beneficially used or reused or legitimately recycled or reclaimed; or

(2) It is being accumulated, stored, or physically, chemically, or biologically treated prior to beneficial use or reuse or legitimate recycling or reclamation; or

(3) It is a spent pickle liquor which is used in wastewater treatment at a facility holding a National Pollutant Discharge Elimination System (NPDES) permit, or which is accumulated, stored, or physically, chemically, or biologically treated before such reuse.

(b) Except for those wastes listed in Subsection 5.05(a)(3), a hazardous waste which is sludge, or which is listed in Section 7, or which contains one or more hazardous wastes listed in Section 7, and which is transported or stored prior to being used, reused, recycled, or reclaimed is subject to the requirements of Section 9 of this regulation and Subsection 3.01.05(b) of the DNR Regulations.

5.06. The Director shall exempt an applicant from all requirements of Sections 8, 10, and 11 of this regulation except waste analysis (Subsection 11.04) if the waste to be burned is:

(a) (1) Listed as a hazardous waste in Section 7 solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

(2) Listed as a hazardous waste in Section 7 solely because it is reactive (Hazard Code R) for characteristics other than those listed in Subsections 6.05(d) or (e) and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both; as determined by the test for characteristics of hazardous waste under Section 6; or

(4) A hazardous waste solely because it possesses any of the reactivity characteristics described by Subsections 6.05(a), (b), (c), (f), (g) and (h) and will not be burned when other hazardous wastes are present in the combustion zone; and

(b) If the waste analysis submitted with the Part B application shows that the waste nor the combustion by-products of the waste contain none of the hazardous constituents listed in Appendix VIII of the DNR Regulations which would reasonably be expected to be in the waste.

5.07. If the waste to be burned is one which is described by Subsection 5.06 and contains insignificant concentrations of the hazardous constituents listed in Appendix VIII of the DNR Regulations, then the Director may, in establishing permit conditions, exempt the applicant from all requirements of Section 8, 10, and 11 except waste analysis (Subsection 11.04), after consideration of the waste analysis included with Part B of the permit application, unless the Director finds that the waste will pose a threat to human health or the environment when burned in an incinerator.

5.08. 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 Commission including, but not limited to, Regulation VI and XIII.

5.09. The requirements of this regulation do not apply to:

(a) A farmer disposing of waste pesticides from his own use as provided in Subsection 6.05.02 of the DNR Regulations; or

(b) Persons with respect to those activities which are carried out to immediately contain or treat a spill of hazardous waste or material which, when spilled, becomes a hazardous waste, except that, with respect to such activities, the appropriate requirements of sections 8.03 and 8.04 of the DNR Regulations are applicable to owners and operators of treatment, storage, and disposal facilities otherwise subject to this regulation. After the immediate response activities are completed, the applicable provisions of this regulation apply fully to the management of any spill residue or debris which is a hazardous waste under Section 7; or

(c) The owner or operator of a totally enclosed treatment facility; or

(d) A transporter storing manifested waste shipments of hazardous waste in containers meeting the requirements of Subsection 6.03.01 of the DNR Regulations, at a transfer facility for a period of ten (10) days or less; or

(e) Persons adding absorbent materials to hazardous waste in a container and persons adding hazardous waste to absorbent material in a container, provided that these actions occur at the time hazardous waste is first placed in the container and Subsections 8.02.08(b), 8.07.02, and 8.07.03 of the DNR Regulations are complied with.

Section 6. Characteristics of Hazardous Waste.

6.01. A hazardous waste which is identified by a characteristic in this section, but is not listed as a hazardous waste in Section 7, is assigned the EPA Hazardous Waste Number set forth by the respective characteristic in this section. This number shall be used for complying with the recordkeeping and reporting requirements of this regulation.

6.02. For purposes of this section the Director will consider a sample obtained using any applicable sampling method specified in Appendix I of the DNR Regulations to be a representative sample.

6.03. A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(a) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has a flashpoint less than 60° C (140°F), as determined by a Pensky-Martens Closed Cup tester using the test method specified in ASTM Standard D-93-79, or a Setaflash Closed Cup Tester using the test method specified in ASTM Standard D-3278-78, or as determined by an equivalent test method approved by the EPA Administrator; or

(b) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard; or

(c) It is an ignitable compressed gas as defined in 49 CFR 173.300 as amended December 1, 1980, and as determined by the test methods

described in that regulation or equivalent test methods approved by the EPA Administrator; or

(d) It is an oxidizer as defined in 49 CFR 173.151 and as amended as of December 1, 1980.

A solid waste that exhibits the characteristics of ignitability, but is not listed as a hazardous waste by the DNR Director has the EPA Hazardous Waste Number of D001.

6.04. A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(a) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either the test method specified in EPA's "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods", as amended July 7, 1981, or an equivalent test method approved by the EPA Administrator; or

(b) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55° C (130°F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods", or an equivalent test method approved by the EPA Administrator.

A solid waste that exhibits the characteristics of corrosivity but is not listed as a hazardous waste by the DNR Director has the EPA Hazardous Waste Number of D002.

6.05. A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(a) It is normally unstable and readily undergoes violent change without detonating; or

(b) It reacts violently with water; or

(c) It forms potentially explosive mixtures with water; or

(d) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment; or

(e) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment; or

(f) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement; or

(g) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure; or

(h) It is a forbidden explosive as defined in 49 CFR 173.51, amended as of December 1, 1980, or a Class A explosive as defined in 49 CFR 173.53, amended as of December 1, 1980, or a Class B explosive as defined in 49 CFR 173.88, amended as of December 1, 1980.

A solid waste that exhibits the characteristic of reactivity but is not listed as a hazardous waste by the DNR Director has the EPA Hazardous Waste Number of D003.

6.06. A solid waste exhibits the characteristic of EP Toxicity if, using the test methods listed in Appendix II of the DNR Regulations or equivalent methods approved by the EPA Administrator, the extract from a representative sample of the waste contains any of the contaminants listed in Subsection 3.03.05, Table 1, of the DNR Regulations at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering, is considered to be the extract for the purposes of this subsection.

A solid waste that exhibits the characteristic of EP Toxicity but is not listed as a hazardous waste by the DNR Director has the EPA Hazardous Waste Number specified in Subsection 3.03.05, Table 1, of the DNR Regulations, which corresponds to the toxic contaminant causing it to be hazardous.

Section 7. Lists of Hazardous Wastes.

7.01. A waste is a hazardous waste if it is listed in Subsection 3.04.02 or 3.04.03 of the DNR Regulations or exhibits a characteristic of hazardous waste as defined in Section 6 of this regulation, unless it has been excluded by the DNR Director from this list under 40 CFR 260.20 and 260.22.

7.02. The DNR Director will indicate his basis for listing the classes or types of wastes listed in this section by employing one or more of the following Hazard Codes:

Ignitable Waste	(I)
Corrosive Waste	(C)
Reactive Waste	(R)
EP Toxic Waste	(E)
Acute Hazardous Waste	(H)
Toxic Waste	(T)

Appendix VII of the DNR Regulations identifies the constituent which caused the DNR Director to list the waste as an EP Toxic Waste (E) or Toxic Waste (T) in Subsections 3.04.02 or 3.04.03 of the DNR Regulations.

7.03. Each hazardous waste listed in this section is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the recordkeeping and reporting requirements of this regulation.

7.04. The following hazardous wastes listed in Subsections 3.04.02 or 3.04.03 of the DNR Regulations are subject to the exclusion limits for acutely hazardous wastes established in Subsection 5.04: (Reserved).

7.05. In addition to those hazardous wastes listed in Subsections 3.04.02 or 3.04.03 of the DNR Regulations, the following materials or items are hazardous wastes if and when they are discarded or intended to be discarded:

(a) Any commercial chemical product or manufacturing chemical intermediate having the generic name listed in Subsections 7.05(e) or 7.05(f); or

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in Subsections 7.05(e) or 7.05(f); or

(c) Any residue remaining in a container or an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in Subsection 7.05(e) unless the container is empty as defined in Subsection 5.03. Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported, or treated prior to such use, reuse, recycling, or reclamation, such residue shall be considered to be intended for discard, and thus a hazardous waste. An example of a legitimate reuse of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue; or

(d) Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in Subsections 7.05(e) or 7.05(f), or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, or any off-specification chemical product and manufacturing chemical intermediate which, if it met specification, would have the generic name listed in Subsections 7.04(e) or 7.05(f). The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in " refers to a chemical

substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in Subsections 7.05(e) or 7.05(f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in Subsections 7.05(e) or 7.05(f), such waste will be listed in either Subsections 3.04.02 or 3.04.03 of the DNR Regulations, or will be identified as a hazardous waste by the characteristics set forth in Section 6; or

(e) The commercial chemical products, manufacturing chemical intermediates, off-specification commercial chemical products, or manufacturing chemical intermediates referred to in Subsections 7.05(a) through (d) are identified as acute hazardous waste (H) and are subject to the small quantity exclusion defined in Subsection 5.04. These wastes and their corresponding EPA Hazardous Waste Numbers are listed in Subsection 3.04.04(e) of the DNR Regulations. The primary hazardous properties of these materials have been indicated by the letter T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity; or

(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in Subsections 7.05(c) through (d) are identified as toxic wastes (T)

unless otherwise designated and are subject to the small quantity exclusion defined in Subsection 5.04. These wastes and their corresponding EPA Hazardous Waste Numbers are listed in Subsection 3.04.04(f) of the DNR Regulations. The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability), and C (Corrosivity). Absence of a letter indicates that the compound is listed only for toxicity.

Section 8. Performance Standards for Incineration.

8.01. An incinerator burning hazardous waste must be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under Section 10, it will meet the following performance standards:

(a) An incinerator burning hazardous waste must achieve a destruction and removal efficiency (DRE) of 99.99 percent for each principal organic hazardous constituent (POHC) designated under Section 10 in its operating permit for each waste feed. DRE is determined for each POHC from the following equation:

$$\text{DRE} = \frac{(W_{\text{in}} - W_{\text{out}})}{W_{\text{in}}} \times 100\%$$

Where:

W_{in} = Mass feed rate of one principal organic hazardous waste constituent (POHC) in the waste stream feeding the incinerator, and

W_{out} = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

One more more POHCs will be specified in the facility's permit from among those constituents listed in Appendix VIII of the DNR Regulations for each waste feed to be burned. This specification will be based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed considering the results of waste analysis and trial burns or alternative data submitted with Part B of the facility's permit application. Organic constituents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHCs. Constituents are more likely to be designated as POHCs if they are present in large quantities or concentrations in the waste. Trial POHCs will be designated for performance of trial burns in accordance with the procedure specified in Section 20 for obtaining trial burn permits.

(b) Incinerators burning hazardous waste must destroy hazardous waste combustion by-products so that the total mass emission rate of these by-products emitted from the stack is no more than 0.01 percent of the total mass feed rate of the POHCs fed into the incinerator.

For each waste feed to be burned one or more hazardous combustion by-products will be specified from among those constituents listed in Appendix VIII of the DNR Regulations. This specification will be based on the degree of difficulty of incineration of the organic constituents of

the waste feed and the waste feed combustion by-products and the by-products concentration or mass considering the results of waste analyses and trial burns or alternative data submitted with Part B of the facility's permit application. Combustion by-products which represent the greatest degree of difficulty of incineration will be those most likely to be designated as hazardous combustion by-products. Constituents are more likely to be designated as hazardous combustion by-products if they are present in large quantities or concentrations. Trial hazardous combustion by-products may be designated for performance of trial burns in accordance with the procedure specified in Section 20.

(c) After consideration of the factors listed in Subsection 8.01(g), the Commission may, on a case-by-case basis, establish performance standards which are either more or less stringent than those required by Subsection 8.01(b) based on a finding that:

(1) More stringent standards are necessary because the emission rates achieved by the application of the performance standards otherwise required by this subsection may pose an unacceptable risk to human health and the environment, or

(2) Less stringent standards will achieve emission rates which do not pose an unacceptable risk to human health and the environment.

(d) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kilograms per hour (4 pounds per hour) of hydrogen chloride (HCl) must control HCl emissions such that the rate of emission is no greater than the larger of either 1.8 kilograms per hour or

1 percent of the HCl in the stack gas prior to entering any pollution control equipment.

(e) An incinerator burning hazardous waste must not emit particulate matter exceeding 180 milligrams per dry standard meter (0.08 grains per dry standard cubic foot) when corrected for the amount of oxygen in the stack gas according to the formula:

$$P_C = P_M \times \frac{14}{21-Y}$$

Where P_C is the corrected concentration of particulate matter, P_M is the measured concentration of particulate matter, and Y is the measured concentration of oxygen in the stack gas, using the Orsat method for oxygen analysis of dry flue gas, presented in 40 CFR Part 60, Appendix A (Method 3). This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities the applicant must use an appropriate correction procedure approved by the EPA Administrator.

(f) After consideration of the factors listed in Subsection 8.01(g), the Commission may, on a case-by-case basis, stipulate performance standards for metals, hydrogen halides, and elemental halogens, 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.

(g) The findings under Subsections 8.01(c) and 8.01(f) will be made after evaluating the following data which the Director may require from the permit applicant:

(1) Emissions of POHCs, hazardous combustion by-products, metals, and hydrogen halides, including:

- (i) Mass emission rates from the stack, and
- (ii) Concentration in the gas stream exiting the

stack; and

(2) Air dispersion estimates for those substances, including:

- (i) Meteorological data, and
- (ii) Description of the air dispersion models, and
- (iii) Assumptions underlying the air dispersion models

used; and

(3) Expected human and environmental exposure, including:

- (i) Topographic considerations,
- (ii) Population distributions,
- (iii) Population activities, and
- (iv) Modes, intensity, and duration of exposure; and

(4) Consequences of exposure including:

- (i) Dose-response curves for carcinogens,
- (ii) Health effects based on human or animal studies

for other toxic constituents,

(iii) Potential for accumulation of toxic constituents in the human body, and

(iv) Statements of expected risk to individuals or populations.

(h) For purposes of permit enforcement compliance with the operating requirements specified in the permit (Section 10) will be regarded as compliance with this regulation. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this section may be "information" justifying modification, revocation, or reissuance of a permit under Section 16 of this regulation.

8.02. Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives. Waste explosives include wastes which have the potential to detonate and bulk military propellants which cannot be safely disposed of through other modes of treatment. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound (0.33 kilometers/second at sea level). Owners or operators choosing to open burn or detonate waste explosives must receive prior written approval from the Director and must do so in accordance with the following table and in a manner that does not threaten human health, safety, or the environment.

Pounds of Waste Explosives or Propellants	Minimum Distance From Open Burning or Detonation to the Property of Others
0 to 100	204 meters (670 feet)
101 to 1,000	380 meters (1,250 feet)
1,001 to 10,000	530 meters (1,730 feet)
10,001 to 30,000	690 meters (2,260 feet)

Section 9. Facility Requirements.

9.01. Owners and operators of hazardous waste incineration facilities shall comply with the personnel training requirements as specified by Subsection 8.02.07 of the DNR Regulations. An outline of the training program required by Subsection 8.02.07 of the DNR Regulations 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.

9.02. All hazardous waste treatment, storage, and disposal facilities must be designed, constructed, maintained, and operated 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.

9.03. Facilities that treat, store, or dispose of ignitable or reactive wastes, or mix incompatible waste or incompatible wastes and other materials, must take precautions to 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.

9.04. All hazardous waste tanks must 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; and

(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.

9.05. Tanks used to treat or store hazardous waste containing liquid waste whose true vapor pressure is greater than 10.5 kilo Pascals (1.52 psia) at 25°C and 760 mmHg shall be equipped with an emission control system described as follows:

(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; or

(d) Fixed roof tanks shall be equipped with a vapor recovery system approved by the Director; or

(e) Fixed roof tanks shall be equipped with an equally effective alternative control system approved by the Director.

9.06. Emissions of hazardous waste whose true vapor pressure is greater than 10.5 kilo Pascals (1.52 psia) at 25°C, 760 mmHg shall be prevented during loading or unloading of tank trucks, railroad tank cars, and barges as follows:

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

(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 which close automatically when disconnected.

9.07. A hazardous waste pile must be designed to prevent dispersal of the waste by wind.

9.08. Hazardous waste landfills must be covered or otherwise managed to control the wind dispersal of the waste.

9.09. 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; and

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

(c) The potential for health risks caused by human exposure to waste constituents; and

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

(e) The potential for interference with the enjoyment of life or property; and

(f) The persistence and permanence of such potential adverse effects.

9.10. Owners or operators which generate or transport hazardous waste shall utilize best available control technology 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.

Section 10. Operating Requirements.

10.01. An incineration facility must be operated in accordance with operating requirements specified in the permit. These operating requirements will be specified on a case-by-case basis as those demonstrated (in a trial burn or alternative data as specified in Section 17 and included with the Part B of a facility's permit application) to be sufficient to comply with the performance standards of Section 8.

10.02. Each set of operating requirements contained in the applicable permits for hazardous waste incineration facilities shall specify the composition of the hazardous waste feed (including acceptable variations in the physical or chemical properties of the waste feed) and which, for incinerators, will not affect compliance with the performance requirements of Section 8 to which the operating requirements apply. For each such waste feed, such permit shall specify, where applicable, acceptable operation limits including the following conditions:

(a) Carbon monoxide (CO) level in the stack exhaust gas;

(b) Waste feed rate;

(c) Combustion temperature;

(d) An appropriate indicator of combustion gas velocity;

(e) Allowable variations in treatment system design or operating procedures; and

(f) Such other operating requirements as are necessary to ensure that the standards, requirements, terms, and conditions of this regulation are met.

10.03. During start-up and shut-down of an incinerator, hazardous waste (except waste exempted in accordance with Subsection 5.06 and 5.07) must not be fed to the incinerator unless the incinerator is operating within the conditions of operation (temperature, air feed rate, etc.) specified in the permit.

- 10.04. An incinerator must be operated with a functioning system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits established under Subsection 10.02.
- 10.05. The owner or operator of a hazardous waste incinerator may burn only those wastes specified in his permit and only under operating conditions specified for those wastes under Subsection 10.02 except:
- (a) In approved trial burns under Section 20; or
 - (b) Under exemptions pursuant to Subsection 5.06 and 5.07.
- 10.06. Hazardous wastes other than those specified in a permit may be incinerated only after operating conditions have been specified in a new permit or a permit modification, as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with Part B of the permit application under Section 17.
- 10.07. Fugitive emissions from the combustion zone of hazardous waste incinerators must be prevented by:
- (a) Keeping the combustion zone totally sealed against fugitive emissions; or
 - (b) Maintaining a combustion zone pressure lower than atmospheric pressure; or
 - (c) An alternate means of control demonstrated (with Part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

10.08. An incinerator must cease operation when changes in the waste feed, incinerator design, or operating conditions exceed limits designated in the permit.

10.09. The permit for a new hazardous waste incinerator must establish appropriate conditions for each of the applicable requirements of this regulation, which shall include but are not limited to allowable waste feed and operating conditions necessary to meet the requirements of this Section 10, sufficient to comply with the following standards:

(a) For the period beginning with initial introduction of hazardous waste to the incinerator and ending with initiation of the trial burn, and only for the minimum time required to establish operating conditions required in paragraph (b) of this subsection, not to exceed a duration of seven hundred twenty (720) hours operating time for treatment of hazardous waste, the operating requirements must be those most likely to ensure compliance with the performance standards of Section 8 based on previous trial burns, bench scale or pilot plant studies, thermal degradation studies or other information considered necessary and proper by the Director. The Director may extend the duration of this period once for up to seven hundred twenty (720) additional hours when good cause for the extension is demonstrated by the applicant.

(b) For the duration of the trial burn the operating requirements must be sufficient to demonstrate compliance with the performance standards of Section 8 and must be in accordance with the approved trial burn plan.

(c) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Director, the operating requirements must be those most likely to ensure compliance with the performance standards of Section 8 based on the previous trial burns, bench scale or pilot plant studies, thermal degradation studies, or other information considered necessary and proper by the Director.

(d) For the remaining duration of the permit the operating requirements must be those demonstrated, in a trial burn or by alternative data specified in Subsection 17, as sufficient to ensure compliance with the performance standards of Section 8.

Section 11. Monitoring and Inspections.

11.01. The incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be subject to thorough visual inspection at least daily for leaks, spills, fugitive emissions, and signs of tampering.

11.02. The incinerator emergency waste feed cut-off system and associated alarms must be tested at least weekly to verify operability unless the applicant demonstrates to the Director that weekly inspections will unduly restrict or upset operations and that less frequent inspection will be adequate. At a minimum operational testing must be conducted at least monthly.

11.03. The owner or operator of a hazardous waste incinerator must conduct the following monitoring when incinerating hazardous waste:

(a) Combustion temperature, waste feed rate and an indicator of combustion gas velocity as specified in the facility permit; and

(b) Carbon monoxide (CO) shall be continuously monitored at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere. Monitoring results shall be continuously recorded.

11.04. Throughout normal operation the permittee must conduct sufficient waste analysis to verify that waste feed to the incineration unit is within the physical and chemical composition limits specified in the permit.

11.05. All monitoring and inspection data must be recorded and the records must be placed in the operating log required by Subsection 13.01.

Section 12. Air Emission Monitoring.

Upon the request of the Director, the owner or operator of a hazardous waste treatment, storage, or disposal facility from which hazardous wastes constituents or hazardous waste decomposition by-products are emitted, or may be emitted, to the air must establish and operate an air monitoring program approved by the Director to measure the effect of the facility on ambient air quality.

Section 13. Recordkeeping for Incineration Facilities.

13.01. The owner or operator of a hazardous waste incineration facility must keep a written operating record containing the following information at his facility:

(a) All the information as required by Subsections 8.02.07 and 8.05.04 of the DNR Regulations; and

(b) Records and results of waste analysis performed as specified in Subsection 11.04 and Sections 17 and 20; and

(c) Where applicable, the methods which will be used to meet the waste analysis requirements for incineration as specified in Subsection 11.04 and Sections 17 and 20; and

(d) Records and results of inspections as required by Section 11; and

(e) Monitoring, testing or analytical data required by Section 11; and

(f) The quantity of hazardous waste incinerated per day.

The above information may be recorded in the operating record required pursuant to Subsection 8.05.04 of the DNR Regulations. The operating log and associated data must be maintained until closure of the facility except records and results of inspections as required by Section 11 need only be kept for three (3) years.

13.02. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

13.03. The permittee shall retain records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation), copies of all reports required by the permit, and copies of all data used to complete applications for permits for a period of at least three (3) years from the date of the sample, measurement report, or the date on which a permit

application is signed. This period may be extended by the request of the Director at any time.

13.04. Records of monitoring information shall include:

(a) The date, exact place, and the time of sampling or measurements;

and

(b) The individual(s) who performed the sampling or measurements; and

(c) The date(s) analyses were performed; and

(d) The individual(s) who performed the analyses; and

(e) The analytical techniques or methods used; and

(f) The results of such analyses.

13.05. All applications, reports, or other information submitted to the Director shall be signed and certified as specified in Section 18.

Section 14. Reports and Testing.

14.01. At such reasonable time as the Director may designate, the operator of an incineration facility shall be required to conduct or have conducted stack tests to determine the emissions in exhaust gases when the Director has reason to believe that the stack emission limitations specified in the permit are being violated or for compliance testing. Such tests shall be conducted by analytical techniques specified in EPA Document SW-846, "Test Methods for Evaluation of Solid Waste Physical/Chemical Methods, 2nd Edition", and other applicable test methods approved by the EPA Administrator. Test reports shall be filed on forms and in a manner acceptable to the Director. The Director, or his duly authorized representative, may at his option witness or conduct such stack tests.

Should the Director exercise his option to conduct such tests, the operator will provide all the necessary sampling connections and sampling ports to be located in such a manner as the Director may require, power for test equipment and the required safety equipment such as scaffolding, railings, and ladders to comply with generally accepted good safety practices.

14.02. The Director, or such authorized representative, may conduct such tests as he may deem necessary to evaluate hazardous waste emissions other than those noted above.

Section 15. Reporting Requirements.

15.01. The following information shall be provided to the Director:

(a) The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to a facility which may result in the discharge of hazardous waste or the constituents, thereof, to the atmosphere; and

(b) Permittees shall give advance notice to the Director of any planned changes in a permitted facility or activity which may result in noncompliance with permit requirements; and

(c) Permits are not transferable to any person except after notice to the Director under Section 24. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary; and

(d) Monitoring results shall be reported at the intervals specified in the permit; and

STATEMENT OF THE FACTS AND
CIRCUMSTANCES CONSTITUTING THE
EMERGENCIES REQUIRING TEMPORARY
EMERGENCY REGULATION XXV

Subject: Regulation XXV - To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities.

This regulation sets forth air pollution performance standards and permit requirements for facilities within the State which conduct hazardous waste management activities.

Regulation XXV was initially adopted by the West Virginia Air Pollution Control Commission on April 6, 1982. After adoption, federal regulations relating to incineration of hazardous waste and permitting of hazardous waste management facilities were changed.

In order for the State to assume enforcement authority of the federal Resource Conservation and Recovery Act (RCRA) program, State regulations must be equivalent to the Federal regulations. On October 27, 1983, the Commission adopted Emergency Regulation XXV which provides that the Commission's hazardous waste incineration program is equivalent to the counterpart federal program.

Adoption of Regulation XXV on a temporary emergency basis (and in conjunction with rules and regulations of other State agencies) enables the State to receive immediate consideration toward delegation of interim status under the federal RCRA program.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE Oct. 28, 1983

Administrative Law Division

(e) Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any compliance schedule, shall be submitted no later than fourteen (14) days following each schedule date; and

(f) When a permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information; and

(g) The permittee shall report all instances of noncompliance not reported under Subsections 15.01(d), 15.01(e), 15.03 or 15.04 at the time monitoring results are submitted. The reports shall contain the information listed in Subsection 15.03.

15.02. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility, until:

(a) The permittee has submitted to the Director by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(b) (1) The Director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(2) If within fifteen (15) days of the date of submission of the letter in Subsection 15.02(a), the permittee has not received notice from

the Director of his intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

15.03. Permittees shall orally report to the Director any noncompliance which results in the discharge of hazardous waste or the constituents thereof to the atmosphere which may endanger health or the environment within twenty-four (24) hours of the occurrence, including:

(a) Information concerning release or discharge of any air emissions that may cause an endangerment to health or the environment; and

(b) Any information of a release or discharge of hazardous waste or constituents thereof or of a fire or explosion from the Hazardous Waste Management facility, which could threaten the environment or human health.

(c) Any such report shall include a description of the occurrence and its cause, if known, including:

(1) Name, address, and telephone number of the owner or operator and the permittee;

(2) Name, address, and telephone number of the facility;

(3) Date, time, and type of incident;

(4) Name and quantity of material(s), hazardous waste(s), or pollutant(s) involved;

(5) The extent of injuries, if any;

(6) An assessment of actual or potential hazards to the environment and human health; and

(7) Estimated quantity and disposition of recovered material that resulted from the incident.

15.04. Within five (5) days of a release as described in Subsection 15.03, a written submission shall be provided to the Director. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Director may waive the five (5) day written notice requirement in favor of a written report within fifteen (15) days.

Section 16. Issuance, Modification, and Revocation or Reissuance of Permits.

16.01. No person shall construct a new hazardous waste treatment, storage (except for storage in tanks or containers) or disposal facility which discharges, or may discharge, hazardous waste to the atmosphere prior to submitting Part A and Part B permit applications, as provided in Section 17, and obtaining a permit from the Director.

16.02. When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance, or conducts a review of the permit file) he may determine whether or not one or more of the causes listed in Subsections 16.02(a) and 16.02(b) for modification, or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly and may request an updated application if necessary. If cause does not exist under this subsection or Section 24, the Director shall not modify or revoke and reissue the permit. During any revocation and

reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

(a) The following are causes for modification, but not revocation and reissuance, of permits, except that the following may be cause for revocation and reissuance, as well as modification, when the permittee requests or agrees, where:

(1) There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit; or

(2) Permits may be modified during their terms when the Director receives additional information. Permits may be modified for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance; or

(3) The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or regulations when the permit condition requested to be modified was based on a promulgated hazardous waste regulation and the Commission has revised,

withdrawn, or modified that portion of the regulation on which the permit condition was based; and

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed State promulgated regulations if the remand and stay concern that portion of the regulations on which the permit conditions were based and a request is filed by the permittee in accordance with Section 21 of this regulation within ninety (90) days of judicial remand; or

(4) Conditions applicable to units at a facility were not previously included in the facility's permit; or

(5) A land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions; or

(6) Treatment of hazardous wastes other than those specified in the facility's permit.

(b) The following are causes to modify, or alternatively at the sole discretion of the Director, revoke and reissue a permit:

(1) Cause exists for termination under Section 23 and the Director determines that modification or revocation and reissuance is appropriate; or

(2) The Director has received notification (as required pursuant to Section 24) of a proposed transfer of the permit.

Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

- 16.03. All applications for new treatment, storage or disposal facilities must be submitted one hundred eighty (180) days before physical construction is expected to commence.
- 16.04. Any treatment, storage or disposal facility with an effective permit shall submit a new application at least one hundred eighty (180) days before the expiration date of the effective permit.
- 16.05. The Commission may modify a compliance schedule if it determines that good cause exists. Acts of God, strike, flood, or material shortage or other events over which the permittee has little or no control and for which there is no reasonable available remedy shall constitute good cause.

Section 17. Contents of Part A and B Applications.

- 17.01. The following information shall be submitted in a Part A permit application:
- (a) The activities conducted by, or proposed to be conducted by, the applicant which require it to obtain a permit pursuant to this regulation; and
 - (b) Name, mailing address, and location of the facility for which the application is submitted; and
 - (c) Up to four (4) SIC codes which best reflect the principal products or services provided by the facility; and
 - (d) The latitude and longitude of the facility; and
 - (e) The name, address, and telephone number of the owner of the facility; and
 - (f) An indication of whether the facility is new or existing and whether it is a first or revised application; and

(g) For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas; and

(h) For existing facilities, photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas; and .

(i) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity; and

(j) 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:

(1) Hazardous waste management program under DNR,

(2) Prevention of Significant Deterioration (PSD) program under the West Virginia Air Pollution Control Act or the Federal Clean Air Act,

(3) Nonattainment program under the West Virginia Air Pollution Control Act or the Federal Clean Air Act,

(4) National Emission Standards for Hazardous Pollutants (NESHAP) preconstruction approval under the West Virginia Air Pollution Control Act or the Federal Clean Air Act, and

(5) Other relevant air pollution control permits including local permits; and

(k) A topographical map (or other map if a topographical map is unavailable) extending to at least one (1) mile beyond the property

boundaries of the source depicting each hazardous waste treatment, storage, or disposal facility and all air emission discharge points.

(l) A brief description of the nature of the business; and

(m) A description of the processes used or to be used for treating, storing, and disposing of hazardous waste, and the design capacity of such processes; and

(n) A specification of the hazardous wastes listed or designated under Section 7 to be treated, stored, or disposed at the facility, and an estimate of the quantity of such wastes to be treated, stored, or disposed annually.

(o) The filing of a completed copy of a Part A application with the Director shall constitute compliance with Subsection 17.01.

17.02. The following information shall be submitted in a Part B permit application:

(a) A general description of the facility; and

(b) Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known in order to treat, store, or dispose of such wastes properly in accordance with Section 8 and Section 9; and

(c) A copy of the required waste analysis plan required by Subsection 8.02.04(b) of the DNR Regulations and, if applicable, Subsection 8.02.04(c) of the DNR Regulations and the methods which will be used to meet the waste analysis requirements of Subsection 11.04 and Sections 17 and 20; and

(d) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with Subsections 9.02 and 9.03; and

(e) A topographic map showing a distance of 1,000 feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours must be clearly shown on the map. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet) if relief is less than 6.1 meters (20 feet). Owners and operators of hazardous waste facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

- (1) Map scale and date,
- (2) Surrounding land uses (residential, commercial, agricultural, recreational),
- (3) A wind rose (i.e., prevailing wind speed and direction),
- (4) Orientation of the map (north arrow),
- (5) Legal boundaries of the hazardous waste management facility site,
- (6) Buildings, treatment, storage, or disposal operations; or other structures (recreation areas, access and internal roads, loading and unloading areas, fire control facilities, etc.),

(7) Location of operational units within the hazardous waste management facility site where hazardous waste is (or will be) treated, stored, or disposed (including equipment cleanup areas), and

(8) Access controls (fences, gates); and

(f) Technical data, including but not limited to design drawings and specifications, shall be certified by a registered professional engineer. .

17.03. In addition to the information required under Subsection 17.02, applicants submitting Part B applications for hazardous waste incinerators must fulfill the requirements of Subsection 17.03(a), 17.03(b), or 17.03(c):

(a) When seeking exemption under Subsections 5.06 or 5.07 (ignitable, corrosive, or reactive wastes only) the applicant must provide:

(1) Documentation that the waste is listed as a hazardous waste in Section 7 solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

(2) Documentation that the waste is listed as a hazardous waste in Section 7 solely because it is reactive (Hazard Code R) for characteristics other than those listed in Subsections 6.05(d) or (e) and will not be burned when other wastes are present in the combustion zone; or

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by tests for characteristics of hazardous waste under Section 6; or

(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics in Subsections 6.05(a),

(b), (c), (f), (g), or (h) and it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) Submit a trial burn plan or all the results of a trial burn conducted in accordance with Section 20, Trial Burn Permits, including all the determinations required by that section; or

(c) In lieu of a trial burn plan or the results of a previous trial burn, the applicant shall submit the following information:

(1) An analysis of each hazardous waste or mixture of hazardous wastes including:

(i) Heating value of the waste in the form and composition in which it will be burned;

(ii) Viscosity (if applicable), or a description of the physical form of the waste;

(iii) An identification of all hazardous constituents listed in Appendix VIII of the DNR Regulations which are present in the waste to be burned, except that the applicant need not analyze for constituents in Appendix VIII of the DNR Regulations which would not reasonably be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis of their exclusion stated. The waste analysis must rely on analytical techniques specified in EPA Document SW-846, "Test Methods for the Evaluation of Solid Waste Physical/Chemical Methods, 2nd Edition," or equivalent techniques approved by the EPA Administrator;

(iv) An appropriate quantification of the hazardous constituents identified in the waste within the precision produced by analytical methods specified in EPA Document SW-846, "Test Methods for Evaluation of Solid Waste, Physical/Chemical Methods, 2nd Edition," or equivalent techniques approved by the EPA Administrator;

(v) A quantification of those hazardous constituents in the waste which may be designated POHCs based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards of this regulation; and

(2) A detailed engineering description of the incinerator including, where applicable:

- (i) Manufacturer's name and model number of the incinerator,
- (ii) Type of incinerator (i.e. rotary kiln, liquid injection),
- (iii) Linear dimensions of the incinerator including cross sectional area of combustion chamber,
- (iv) Description of auxiliary fuel system (type/feed),
- (v) Capacity of prime mover,
- (vi) Description of automatic waste feed cut off system(s),
- (vii) Stack gas monitoring and pollution control monitoring systems,
- (viii) Nozzle and burner design,
- (ix) Construction materials,
- (x) Location and description of temperature, pressure, and flow indicating devices and control devices; and

(3) A description and analysis of the hazardous waste to be burned compared with the hazardous waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in Subsection 17.03(c)(1). This analysis should specify the POHCs which the applicant has identified in the waste for which a permit is sought, and any differences from the POHCs in the waste for which burn data are provided; and

(4) The design and operating conditions to be used compared with that for which comparative burn data are available; and

(5) A description of the results submitted from any previously conducted trial burn(s) including:

(i) Sampling and analysis techniques used to calculate performance standards,

(ii) Methods and results of monitoring temperatures, waste feed rates, carbon monoxide and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of that measurement), and

(iii) Identification of any hazardous combustion by-products detected, and

(iv) The certification and results required by Subsections 20.12 and 20.13; and

(6) The expected incinerator operation information to demonstrate compliance with the performance standards and operating requirements of this regulation including;

- (i) Expected carbon monoxide (CO) level in the stack exhaust gas,
- (ii) Waste feed rate,
- (iii) Combustion zone temperature,
- (iv) Indication of combustion gas velocity,
- (v) Expected stack gas volume, flow, and temperature,
- (vi) Computed residence time for waste in the combustion zone,
- (vii) Expected hydrochloric acid removal efficiency,
- (viii) Expected fugitive emissions and their control procedures,
- (ix) Proposed waste feed cut-off limits based on the identified significant operating parameters; and

(7) Supplemental information as the Director finds necessary to achieve the purpose of this regulation; and

(8) Hazardous waste analysis data, including that submitted in Subsection 17.03(c)(1), sufficient to allow the Director to specify as permit principal organic hazardous constituents (POHCs) those constituents for which destruction and removal efficiencies will be required; and

(d) The Director shall approve a permit application without a trial burn if he finds that:

- (1) The wastes are sufficiently similar; and
- (2) The incineration units are sufficiently similar and the data from other trial burns are adequate to specify operating conditions under

Section 10 that will assure that the performance standards in Section 8 will be met by the incinerator.

- 17.04. In addition to the information submitted under Subsections 17.01 and 17.02 permit, permit applications for hazardous waste treatment, storage, or disposal facilities must include documentation to establish compliance with Section 9. This information shall be provided in a form and manner to be specified by the Director.

Section 18. Signatories to Permit Applications, Registrations, and Reports.

- 18.01. All permit applications shall be signed as follows:

(a) For a corporation: By a principal executive officer authorized to act for and on behalf of the corporation of at least the level of vice-president; or

(b) For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official.

- 18.02. All reports required by permits and other information requested by the Director shall be signed by a person described in Subsection 18.01 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in Subsection 18.01; and

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity,

such as the position of plant manager, superintendent, or position of equivalent responsibility; and

(c) The written authorization is submitted to the Director.

18.03. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements shall be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

18.04. Any person signing a document under Section 18 shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

For the purpose of this subsection, the requirements that the signer have "personally examined" and be "familiar with" the information submitted means that the signer must have read the document and must sufficiently comprehend the information contained in the document and its regulatory consequences to enable him or her to make a reasonable inquiry as to the truth, accuracy, and completeness of the information. The requirement that the signer make "inquiry of those individuals immediately responsible

for obtaining the information" means that the signer shall make a good faith effort to ascertain whether or not the information submitted complies with the requirements of this subsection.

Section 19. Permit Conditions.

19.01. The following conditions apply to all treatment, storage, and disposal permits:

(a) Duty to comply. The permittee shall comply with all conditions of his permit except that the permittee need not comply with the conditions of his permit to the extent and for the duration such noncompliance is authorized in an emergency permit. Any permit noncompliance except under the terms of an emergency permit constitutes a violation of this regulation and the State Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by his permit after the expiration date of his permit, he shall apply for, and obtain, a new permit.

(c) Duty to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of his permit.

(d) Duty to mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment to human health resulting from noncompliance with his permit.

(e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of his permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) Property rights. Neither permit issuance nor permit possession conveys any property rights of any sort or any exclusive privilege. Neither permit issuance nor permit possession authorizes any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulation.

(h) Duty to provide information. The permittee shall furnish to the Director within a reasonable time any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating a permit or to determine compliance with a permit.

The permittee shall also furnish to the Director, upon request, copies of records required to be kept by the permit.

(i) Inspection and entry. The permittee shall allow the Director or his duly authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) At reasonable times enter any building, property, premises, place, or permitted facility where hazardous wastes are or have been generated, treated, stored, transported, or disposed of for the purpose of making an investigation with reasonable promptness to ascertain the compliance by any person with the provisions of this regulation; and

(2) At reasonable times enter any establishment or other place maintained by any person where hazardous wastes are or have been stored, treated, or disposed of to inspect and take samples of wastes, air, or any containers or labelings for such wastes. In taking such samples, the Director or such authorized representative, may utilize such sampling methods as he determines to be necessary. If the Director or such representative obtains any such samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. The Director shall promptly provide a copy of any performed analysis to the owner, operator, or agent in charge; and

(3) At reasonable times examine all records relating to the storage, treatment, or disposal of hazardous waste in the possession of any person

who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste, the Director or an authorized representative, shall be furnished with copies of all such records or given the records for the purpose of making copies. If the Director, upon inspection, investigation, or through other means, observes or learns of a violation or probable violation of this article, the Commission is authorized to issue subpoenas and subpoenas duces tecum and to order the attendance and testimony of witnesses to compel the production of any books, papers, documents, manifests, and other physical evidence pertinent to such investigation or inspection.

19.02.

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

(c) Applicable reporting requirements and frequency based upon the impact of the regulated activity and as specified in this regulation.

19.03.

In addition to conditions required in all permits pursuant to Subsection 19.01, the Director shall specify the term of a permit on a case-by-case basis as provided in Section 22.

19.04.

Each permit shall include permit conditions necessary to achieve compliance with the Act and Regulation XXV. In satisfying this provision

the Director may incorporate applicable requirements of Regulation XXV directly into the permit or establish other permit conditions as necessary.

19.05. In the event that the Commission promulgates changes to this regulation prior to final disposition of a permit, whether it be issuance of a new permit or modification or revocation and reissuance of an existing permit, disposition by the Director of the permit application or permit review shall be in accordance with such newly promulgated standards.

19.06. New or reissued permits, and to the extent allowed under Subsections 16.02 and 21.09, modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section.

19.07. All permit conditions shall be incorporated either expressly or by reference in the permit. A specific citation to the applicable regulations or requirements shall be contained in the permit.

Section 20. Trial Burns for Incinerators.

20.01. For the purposes of determining feasibility of compliance with the performance standards of Section 8 and of determining adequate operating conditions under Section 10, the applicant for a permit for an existing hazardous waste incinerator may prepare and submit a trial burn plan and perform a trial burn in accordance with Subsections 20.06 through 20.13. Applicants who submit trial burn plans with the Part B permit applications must complete the trial burn and submit the results specified in Subsection 20.10 within a time period to be specified by the Director.

20.02. For the purposes of determining operational readiness following completion of physical construction of a new hazardous waste incinerator,

the Director must establish conditions in the permit, including but not limited to, allowable waste feeds and operating parameters. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness to conduct a trial burn not to exceed seven hundred twenty (720) hours operating time for treatment of hazardous waste. The Director may extend the duration of this operational period once, for up to seven hundred twenty (720) additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to Section 24.

(a) Applicants must submit a statement with Part B of the permit application which suggests the conditions necessary to operate in compliance with the performance standards of Section 8 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in Section 10.

(b) The Director will review this statement and the results of previous trial burns, bench scale or pilot plant studies, thermal degradation studies or other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Section 8.

20.03. For the purposes of determining feasibility of compliance with the performance standards of Section 8 and of determining adequate operating conditions under Section 10, the Director must establish conditions in the permit for a new hazardous waste incinerator to be effective during the trial burn. Applicants must submit a proposed trial burn plan, prepared

in accordance with Subsection 20.06 with Part B of the permit application.

20.04. For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification (if any) of the permit conditions to reflect the trial burn results, the Director may establish permit conditions, including but not limited to allowable waste feeds and operating conditions sufficient to meet the requirements of Section 10. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation, submission of the trial burn results by the applicant and modification of the facility permit by the Director.

(a) Applicants must submit a statement with Part B of the permit application which identifies the conditions necessary to operate in compliance with the performance standards of Section 8 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters in Section 10.

(b) The Director will review this statement and the results of previous trial burns, bench scale or pilot plant studies, thermal degradation studies or other relevant information submitted with Part B of the permit application and specify those requirements for this period most likely to meet the performance standards of Section 8.

20.05. Based on the results of the trial burn and in accordance with Section 10, the Director shall set the operating requirements in the final permit according to Section 10. In the event that the Director determines that

operating requirements in the final permit should be modified based on results obtained from the trial burn, then the Director may make such permit modifications in accordance with Section 24.

20.06. Trial burn plans must include the following information:

(a) An analysis of each hazardous waste or mixture of wastes to be burned which includes:

(1) Heating value of the hazardous waste in the form and composition in which it will be incinerated,

(2) Viscosity (if applicable) or a description of the physical form of the hazardous waste,

(3) An identification of any hazardous organic constituents listed in Appendix VIII of the DNR Regulations which are present in the hazardous waste to be incinerated except that the applicant need not analyze for constituents in Appendix VIII of the DNR Regulation which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on analytical techniques specified in EPA Document SW-846, "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods, 2nd Edition," or other equivalent techniques approved by the EPA Administrator,

(4) An approximate quantification of the hazardous constituents identified in the waste within the precision produced by analytical methods specified in EPA Document SW-846, "Test Methods for

the Evaluation of Solid Waste, Physical/Chemical Methods, 2nd Edition," or equivalent techniques approved by the EPA Administration, and

(5) A quantification of those hazardous constituents in the waste which may be designated POHCs based on data submitted from other trial or operational burns which demonstrates compliance with the performance standards of this regulation; and

(b) A detailed engineering description of the incinerator for which the trial burn permit is sought including:

- (1) Manufacturer's name and model number,
- (2) Type of incinerator,
- (3) Linear dimensions of the incinerator including the cross-sectional area of the combustion chamber,
- (4) Description of the auxiliary fuel system (type/feed),
- (5) Capacity of prime mover,
- (6) Description of automatic waste feed cut-off system(s),
- (7) Stack gas monitoring and pollution control equipment,
- (8) Nozzle and burner design,
- (9) Construction materials, and
- (10) Location and description of temperature, pressure, and flow indicating and control devices; and

(c) A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis; and

(d) A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Director's decision under Subsection 20.09; and

(e) A detailed test protocol including for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator; and

(f) A description of, and planned operating conditions for, any emission control equipment which will be used; and

(g) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction; and

(h) Such other information as the Director reasonably finds necessary to determine whether to approve the trial burn plan in light of this regulation and the criteria in Subsection 20.09.

20.07. The Director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this regulation.

20.08. Based on the waste analysis data in the trial burn plan, the Director will specify as trial principal organic hazardous constituents (POHCs) those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by

the Director based on his estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in Section 3.04 of the DNR Regulations, the hazardous waste organic constituent or constituents identified in Appendix VII of the DNR Regulations as the basis for their listing.

20.09. The Director shall approve a trial burn plan if he finds that:

(a) The trial burn is likely to determine whether the incinerator performance standards of this regulation can be met; and

(b) The trial burn itself will not present an imminent hazard to human health or the environment; and

(c) The trial burn itself will help the Director to determine operating requirements to be specified; and

(d) The information sought under Subsections 20.09 (a) and (c) cannot reasonably be developed through other means.

20.10. During each approved trial burn (or as soon after the burn as is practical), the applicant must make the following determinations:

(a) A quantitative analysis of the trial POHCs in the hazardous waste feed to the incinerator; and

(b) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, hydrogen chloride (HCl), oxygen (O₂), and hazardous combustion by-products; and

(c) A quantitative analysis of the scrubber water, if any, ash residues, and other residues, for the purpose of estimating the fate of the trial

POHCs and hazardous combustion by-products; and

(d) A total mass balance of the trial POHCs in the hazardous waste;
and

(e) A computation of destruction and removal efficiency (DRE), in
accordance with the DRE formula specified in Section 8; and

(f) If the hydrogen chloride (HCl) emission rate exceeds 1.8 kilograms
per hour (4 pounds per hour), a computation of HCl removal efficiency in
accordance with Subsection 8.01(d); and

(g) A computation of particulate emissions in accordance with Section
8; and

(h) An identification of sources of fugitive emissions and their means
of control; and

(i) A measurement of average, maximum, and minimum temperatures
and combustion gas velocity; and

(j) A continuous measurement of carbon monoxide (CO) in the exhaust
gas; and

(k) Such other information as the Director may specify as necessary
to ensure that the trial burn will determine compliance with the performance
standards in Section 8 of this regulation and to establish the operating
conditions required by Section 10 as necessary to meet those performance
standards.

20.11. The applicant shall submit to the Director a certification that the
trial burn has been carried out in accordance with the approved trial burn
plan and must submit the results of all determinations required by Subsection

20.10. This submission shall be made within ninety (90) days upon completion of the trial burn or later if approved by the Director.

20.12. All data collected during any trial burn must be submitted to the Director following completion of the trial burn.

20.13. All submissions required by this section shall be certified on behalf of the applicant and signed by a person authorized to sign a permit application or report under Section 18.

Section 21. Permit Application Review Procedures.

21.01. Any person who owns or operates an existing hazardous waste incinerator or proposes to construct a new hazardous waste treatment, storage or disposal facility shall complete, sign and submit to the Director an application for a permit. When a facility is owned by one person but is operated by another person, both the owner and operator must sign the permit application. It is the responsibility of the operator to obtain a permit. Applications and permits pursuant to this regulation are not required for injection well facilities, storage tanks and facilities exempt pursuant to Subsection 5.09. However, storage tanks must comply with the facility requirements of Section 9.

21.02. The Director shall not begin the processing of a permit application until the applicant has submitted complete Part A and Part B permit applications as more fully set forth in Section 17.

- 21.03. Permit applications must comply with the signature and certification requirements of Section 18.
- 21.04. The Director shall review for completeness each application for a construction permit within thirty (30) days. Each application for a permit submitted by an existing incineration facility should be reviewed for completeness within sixty (60) days. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing incineration facility or new treatment, storage or disposal facility, the Director shall specify in the notices of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving all such required information. After the application is complete the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.
- 21.05. If an 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.
- 21.06. If the Director decides a site visit is necessary for any reason in conjunction with the processing of an application, he shall notify the applicant and a date shall be scheduled.

21.07. The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in Subsection 21.04.

21.08. Permits may be modified, revoked and reissued, or terminated at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in Sections 16, 23 and 24. All requests shall be submitted to the Director in writing and shall contain facts or reasons supporting the request.

If the Director decides the request is not justified, he shall send the requestor 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.

21.09. If the Director tentatively decides to modify or revoke and reissue a permit under Subsection 16, he shall prepare a draft permit under Section 21.10 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of a new updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

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. If a permit modification satisfies the criteria

in Section 24 for a minor modification, the permit may be modified without a draft permit or public participation. Otherwise, a draft permit must be prepared and other procedures under this section followed. 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 issued.

21.10. Once an application is complete and reviewed, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.

(a) If the Director tentatively decides to deny the permit application, he 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 Director's final decision is that the tentative decision to deny the permit application was incorrect, he shall withdraw the notice of intent to deny and proceed to prepare a draft permit;

(b) If the Director tentatively decides to grant a permit, he shall prepare a draft permit that contains the following information:

- (1) All conditions under Section 19; and
- (2) Monitoring and recordkeeping requirements under Sections 11 and 13; and
- (3) Standards for treatment, storage, and disposal and other permit conditions under Sections 8, 9, and 10 of this regulation.

21.11. All draft permits prepared by the Director shall be accompanied by a fact sheet and shall be based on the administrative record, public noticed, and made available for public comment. The Director shall give notice of opportunity for public hearing, issue a final decision and respond to comments.

21.12. Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) shall be given by the following methods and shall allow forty-five (45) days for public comment.

(a) 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):

(1) The applicant, who shall place a Class I-0 legal advertisement in two (2) newspapers of general circulation in the county where the source is located. In addition, the applicant shall have such notice broadcast over local radio stations. Upon publication and broadcasting, the applicant shall send the Director a copy of the certificate of publication and confirmation of broadcasting; and

(2) The West Virginia Department of Natural Resources and any other agency which the Director knows has issued or is required to issue a hazardous waste management permit for the same facility or activity; and

(3) Federal and State Agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities including any affected state; and

(4) Persons on a mailing list developed by:

- (i) Including those who request in writing to be on the list,
- (ii) Soliciting persons for "area lists" from participants in past permit proceedings in that area,
- (iii) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or State Law Journals. The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request; and

(5) Any other method reasonably calculated to give notice of the action in question to the persons potentially affected by it including press releases or any other forum or medium to elicit public participation.

21.13. All public notices issued under this section shall contain the following information:

(a) Name and address of the office processing the permit action for which notice is being given; and

(b) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit; and

(c) A brief description of the business conducted at the facility described in the permit application or the draft permit; and

(d) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application; and

(e) A brief description of the comment procedures required by Subsections 21.16 and 21.17 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 permit decision; and

(f) Any additional information considered necessary or proper.

21.14. In addition to the general public notices described in Subsection 21.13, the public notice of a hearing shall contain the following information:

(a) Reference to the date of previous public notices relating to the permit; and

(b) Date, time, and place of the hearing; and

(c) A brief description of the nature and purpose of the hearing including the applicable rules and procedures; and

(d) Name and address of the nearest regional office where the permit application file will be available for inspection; and

(e) In addition to the general notice described in Subsection 21.13, all persons identified in Subsections 21.12(a)(1), (2), and (3) shall be mailed a copy of the fact sheet, draft permit, and application (unless previously supplied by the applicant or DNR).

21.15. A fact sheet shall be prepared by the Director for each hazardous waste treatment, storage, or disposal facility draft permit.

The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant, DNR, and upon written request, to any other person.

The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit; and

(b) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged; and

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions; and

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified; and

(e) A description of the procedures for reaching a final decision on the draft permit including:

(1) The beginning and ending dates of the comment period and the address where comments will be received,

(2) Procedures for requesting a hearing and the nature of that hearing, and

(3) Any other procedures by which the public may participate in the final decision; and

(f) Name and telephone number of a person to contact for additional information.

- 21.16. During the public comment period, any interested person may submit written comments on the draft permit and 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 permit decision and shall be answered as provided in Subsection 21.18.
- 21.17. The Director shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in the draft permit(s). The Director also may hold a public hearing at his discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. The Director shall hold a public hearing upon receiving written notice of opposition to a draft permit if the request for a public hearing is filed within forty-five (45) days of the public notice. Whenever possible, the Director shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility. Public notice of any such hearing shall be given by the Director to those persons specified in Subsection 21.12. The Director shall place a Class I-0 legal advertisement in the paper(s) of general circulation in the county where the source is located and shall have such notice broadcast over local radio stations. All such notices shall be given at least thirty (30) days prior to any such hearing.
- 21.18. At the time any final permit decision is issued the Director shall issue a response to comments. This response shall be in writing and shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing; and

(c) The response to comments shall be delivered to any person who commented or any person who requests the same.

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

(1) Prepare a new draft permit, appropriately modified, under Subsection 21.10,

(2) Prepare a revised fact sheet under Subsection 21.15 and reopen the comment period under Subsection 21.12 to give interested persons an opportunity to comment on the information or arguments submitted.

(b) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Subsection 21.12 shall define the scope of the reopening.

Section 22. Duration of Permits.

22.01. Treatment, storage, or disposal operating permits shall be effective for ten (10) years from the date of issuance. Construction permits are valid for the life of the facility. For new incineration facilities a construction and operating permit shall be issued concurrently.

22.02. The term of an operating permit shall not be extended by modification beyond the maximum duration specified in this section.

22.03. The Director may issue any operating permit for a duration that is less than the full allowable term under this section.

22.04. The conditions of an unexpired permit continues in force until the effective date of a new permit if:

(a) The permittee has submitted a timely application under Section 16 which is a complete application for a new permit; and

(b) The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

Section 23. Termination of Permits.

23.01. The following are causes for terminating a permit during its term or for denying a permit renewal application:

(a) Noncompliance by the permittee with any condition of a permit or provision of this regulation; or

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by such action by the Director.

23.02. The termination of a permit shall be embodied in an Order issued by the Director and shall take effect upon issuance. Any such Order may be appealed to the Commission in accordance with the provisions of Chapter 16, Article 20, Section 6 of the Code.

23.03. Once the Director has issued an order terminating a permit, the owner or operator of the affected facility must prepare and submit a new application for any such permit unless further operation or construction is permanently terminated.

Section 24. Minor Modification of Permits.

Upon the consent of the permittee, the Director may modify a permit to make corrections or allowances for changes in the permitted activity listed in this section without following the required procedures under Section 21. Any permit modification not processed as a minor modification under this section shall be made for causes and with draft permit and public notice as required in Section 21. Minor modifications may only:

(a) Correct typographical error; or

(b) Require more frequent monitoring or reporting by the permittee; or

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty (120) days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary provided that a written agreement containing a specific date

for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Director; or

(e) Change the ranges of the operating requirements set in the permit to reflect the results of the trial burn provided that the change is minor; or

(f) Change the operating requirements set in the permit for conducting a trial burn provided that the change is minor; or

(g) Grant one extension of the time period for determining operational readiness following completion of construction for up to seven hundred twenty (720) hours operating time for incineration of hazardous waste.

Section 25. Emergency Permits.

25.01. In the event the Director finds an imminent and substantial endangerment to human health or the environment, the Director may issue a temporary emergency permit to a facility to allow treatment, storage, or disposal of hazardous waste by a nonpermitted facility or hazardous waste not covered by the permit by a facility with an effective permit. The permittee need not comply with the conditions of an operating permit to the extent and for the duration such noncompliance is authorized in an emergency permit.

25.02. The emergency permit:

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

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

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

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

(e) Shall be accompanied by public notice which shall be published by the permittee as described under Subsection 21.12 and shall include the following:

(1) Name and address of the office granting the emergency authorization,

(2) Name and location of the permitted Hazardous Waste Management facility,

(3) A brief description of the wastes involved,

(4) A brief description of the action authorized and reasons for authorizing it; and

(5) 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 regulation.

Section 26. Closure.

At closure, the owner or operator of a hazardous waste incinerator must remove all hazardous waste and hazardous waste residues (including, but not limited to ash, scrubber water, and scrubber sludges) from the incinerator.

Section 27. Existing Facilities.

27.01. Within sixty (60) days of the effective date of this regulation, all persons conducting thermal treatment of hazardous waste, or any other

treatment or disposal facility which discharges, or may discharge, hazardous waste to the atmosphere, shall submit to the Director a Part A permit application as described in Subsection 17.01.

27.02. Within six (6) months of the effective date of this regulation, all persons incinerating hazardous waste shall submit a Part B permit application as described in Subsection 17.02. In addition to the information required in the Part B permit application, the permit application must contain all information required under Subsection 17.03 of this regulation.

27.03. Owners or operators of hazardous waste incinerators in existence on the effective date of this regulation shall be treated as having an operating permit until such time that the Director issues a final determination in relation to such operating permit application provided the facility is operating and continues to operate in compliance with the interim status requirements of the US EPA established pursuant to Section 30005 of the Federal Solid Waste Disposal Act, as amended, if applicable, and in such manner as will not cause or create a substantial risk of a health hazard or public nuisance or a significant adverse effect upon the environment and provided the facility complies with Subsection 11.03 of the DNR Regulations.

27.04. In the event that an existing incineration facility cannot demonstrate compliance with the permit requirements and standards of this regulation, the owner or operator shall submit to the Commission an acceptable compliance program for the attaining and maintaining of the requirements of this regulation. The compliance schedule shall be submitted within

thirty (30) days of notification by the Director that compliance with this regulation or a schedule for compliance is necessary.

27.05. In the event an owner or operator of an existing hazardous waste incinerator which does not meet the permit requirements and the standards of this regulation fails to submit an acceptable control program within the time allowed, the Commission shall, by Order, determine a reasonable control program for the attaining and maintaining of the requirements of this regulation.

27.06. In the event that a hazardous waste treatment, storage or disposal facility, other than incinerators, in existence on the effective date of this regulation does not meet the requirements and standards of this regulation, an acceptable program to fully comply with this regulation shall be developed and offered to the Commission by the responsible owner or operator. Such program shall be submitted upon the request of and within such time as shall be fixed by the Director. The owner or operator of such facility shall not be in violation of this regulation pending submission and consideration of such program and for so long as the approved or amended program is observed. In the event that the owner or operator of any such facility fails to submit an acceptable program and schedule the Commission shall, by Order, determine the complete program and schedule.

27.07. All compliance schedules issued by the Commission shall contain the following provisions:

(a) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible.

(b) Interim dates. Except as provided in Subsection 27.07(b)(2), if a schedule of compliance exceeds one (1) year from the date of issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(1) The time between interim dates shall not exceed one (1) year.

(2) If the time necessary for completion of any interim requirement is more than one (1) year and is not readily divisible into stages for completion, the schedule shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(c) Reporting. The schedule shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance the owner or operator shall notify the Director in writing, of compliance or noncompliance with the interim or final requirements, or submit progress reports if Subsection 27.07(b)(2) is applicable.

27.08. A permit applicant or permittee may cease conducting regulated activities by closing and conducting post-closure care pursuant to applicable requirements rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(1) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(2) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

Section 28. Confidential Information.

28.01. 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.

28.02. It shall be the responsibility of the person claiming any information as confidential under the provisions of Subsection 28.01 above to clearly mark each page containing such information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

- 28.03. Any document submitted to the Director which contains information for which claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director. The document shall be submitted in two (2) separate parts. The first part shall contain all information which is not deemed by the person preparing the reports as confidential and shall include appropriate cross-references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.
- 28.04. No information shall be protected as confidential information by the Director unless it is submitted in accordance with the provisions of Subsection 28.03 above and no information which is submitted in accordance with the provisions of Subsection 28.03 above shall be afforded protection as confidential information unless the Director finds that such protection is necessary to protect trade secrets. The person who submits information claimed as confidential shall receive written notice from the Director as to whether the information has been accepted as confidential or not.
- 28.05. All information which meets the tests of Subsection 28.04 above shall be marked with the term "ACCEPTED" and shall be protected as confidential information. If said person fails to satisfactorily demonstrate to the Director that such information in the form presented to him meets the criteria of Subsection 28.04 above, the Director shall mark the information "REJECTED" and promptly return such information to the person submitting such information.

- 28.06. Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during situations declared to be emergencies by the Director or his designee.
- 28.07. Nothing in this section may be construed as limiting the disclosure of information by the Director to any officer, employee or authorized representative of the State or Federal Government concerned with affecting the purposes of this article.
- 28.08. Persons interested in obtaining information pursuant to this section should submit a request in accordance with the Commission's Miscellaneous Rule No. 1.
- 28.09 The following information shall not be considered confidential:
- (a) The name and address of the permit applicant and the permittee;
- and
- (b) Emission data; and
 - (c) Monitoring reports and associated data.

Section 29. Notice of Changes.

Persons desiring to call to the attention of the Commission amendments to the Federal Solid Waste Disposal Act, as amended, or regulations promulgated pursuant thereto, may do so by filing a notice with the Director, identifying the amendments which have been made to the Federal Solid Waste Disposal Act, as amended, or regulations promulgated pursuant thereto and identifying the provision of this regulation which such person believes should be amended.

Section 30. Application Fees.

Any person who applies for a permit for the construction and/or operation of a hazardous waste incineration 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:

a. New Incineration Facilities

Treatment design capacity more than 1000 tons/yr \$5,000

Treatment design capacity less than 1000 tons/yr \$2,500

b. Modified or Renewed Incineration Facilities \$1,000

The foregoing is a true and correct copy of the West Virginia Air Pollution Control Commission Regulation XXV.

Carl G. Beard, II
Secretary
West Virginia Air Pollution
Control Commission