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Index

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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ABSTRACT

Regulation XXV (1982) was adopted by the Commission on the 6th day of April, 1982 and became effective May 8, 1982, and was filed with the Secretary of State April 8, 1982.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Air Pollution Control Commission

Chapter 16-20 and Chapter 20-5E
Series XXV
(1982)

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 regulation was promulgated or last amended on the 6th day of April, 1982, was filed with the office of the Secretary of State the 8th day of April, 1982. Further, this regulation was filed pursuant to West Virginia Code, Chapter 29A, Article 2, Section 5 on the 30th day of December, 1982 in the office of the Secretary of State.

1.04. Effective Date.

The effective date of this regulation is the 8th day of May, 1982.

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. "Commission" shall mean the West Virginia Air

Pollution Control Commission.

- 2.05. "Constituent", 'hazardous waste constituent' shall mean a compound listed in Appendix VII of the DNR Regulations which caused the EPA Administrator or the DNR Director to list a waste as a hazardous waste.
- 2.06. "CFR" shall mean the Code of Federal Regulations published by the Office of the Federal Register National Archives and Records Service, General Services Administration.
- 2.07. "Director" shall mean the Director of the West Virginia Air Pollution Control Commission.
- 2.08. "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 in lieu of or prior to disposal.
- 2.09. "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.

- 2.10. "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.
- 2.11. "DNR", 'DNR Director' shall mean the West Virginia Department of Natural Resources, and the Director thereof.
- 2.12. "DNR Regulations" shall mean DNR Regulations governing the State Hazardous Waste Management Act.
- 2.13. "EPA" shall mean the United States Environmental Protection Agency.
- 2.14. "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.
- 2.15. "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.

- 2.16. "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).
- 2.17. "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.
- 2.18. "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.
- 2.19. "Operator" shall mean the person(s) responsible for

the overall operation of a hazardous waste treatment, storage, or disposal facility.

- 2.20. "Owner" shall mean the person who owns a hazardous waste treatment, storage, or disposal facility or part of such facility.
- 2.21. "Particulate Matter" shall mean any material, except uncombined water, that exists in a finely divided form as a liquid or solid.
- 2.22. "Pathological Incinerator" shall mean an incinerator used to thermally treat infectious waste.
- 2.23. "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.
- 2.24. "Reconstruct" shall mean modification made to a facility such that fixed capital cost of new components exceeds fifty (50) percent of the fixed capital cost of a comparable entirely new treatment, storage, or disposal facility.
- 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. "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.

2.29. "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.

2.30. "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.

2.31. "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.

2.32. 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 regulation 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; 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; 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.

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 discharge, 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, hotel, 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. 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 5.03(c) and 5.03(d), a small quantity generator's hazardous wastes are not subject to this regulation, provided the generator complies with the requirements of 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 5.04(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 5.04(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:

(1) A total of one kilogram of commercial chemical products and manufacturing chemical intermediates having the generic names listed in 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 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 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 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 5.03(c)(1) or 5.03(c)(2), all of those accumulated wastes for which the accumulation limit was exceeded are fully subject to this regulation. The time period specified in Section 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 section 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 section, 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.

5.04. The following requirements apply to hazardous waste which is used, reused, recycled, or reclaimed:

(a) Except as otherwise provided in Subsection 5.04 (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

(b) 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.

5.05. If the Director determines, after an examination of the waste analysis included with Part B of the permit application, that the waste to be burned is either:

(a) Listed as a hazardous waste in Section 7 only because it is ignitable (Hazard Code I); or

(b) That the waste has been tested against the characteristics of hazardous waste under Section 6, and that it meets only the ignitability characteristic; and that the waste analysis included with Part B of the permit application shows no detectable concentration 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 this regulation except waste analysis (Subsection 11.03) and closure (Section 26).

5.06. 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.

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

(a) A farmer disposing of waste pesticides from his own use; 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 Subsections 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.

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), using the test method specified in ASTM Standard D-93-79 or D-93-80, 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 as 5.2 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 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 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,

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 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 5.03.

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). (Comment: 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 7.04(a) through (d), are identified as acute hazardous waste (H) and are subject to the small quantity exclusion defined in Subsection 5.03. 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 5.03. 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 Thermal Treatment

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:

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

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 or 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 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 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.

(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, 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 a 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 Subsections 8.01(a) and 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 containing more than 0.5 percent chlorine must remove 99 percent of the hydrogen chloride from the exhaust gas.

(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 12 percent CO₂, using the procedures presented in the Clean Air Act regulations "Standards of Performance for Incinerators", 40 CFR 60.50, Subpart E.

(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 section. 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 23 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 waste which has 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 Detona- tion 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. 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.
- 9.02. 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.
- 9.03. 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.

9.04. 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.

9.05. 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.

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

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

9.08. 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.

9.09. 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. A thermal treatment facility must be operated in accordance with operating requirements specified in the construction permit, and for incinerators, in the operating permit. Certain operating requirements will be specified on a case-by-case basis as determined by a trial

burn or by alternative data as specified in Section 17 and submitted with Part B of a facility's permit application).

10.02. Each set of operating requirements contained in the applicable permits for hazardous waste thermal treatment 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 operating limits including the following conditions:

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

(b) Waste feed rate;

(c) Combustion temperature;

(d) Air feed rate to the combustion system;

(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 a thermal treatment

unit, hazardous waste (except ignitable waste exempted in accordance with Subsection 5.05) must not be fed to the thermal treatment unit unless the unit is operating within steady-state conditions of operation (temperature, air feed rate, etc.) or, if a permit is required as specified in the permit. Noncontinuous (batch) thermal treatment units which require a complete thermal cycle to treat a discrete quantity of hazardous waste are exempt from this subsection.

- 10.04. A thermal treatment unit must be operated with a functioning system to automatically cut off waste feed to the thermal treatment unit when operating conditions deviate from steady-state or, if a permit is required, from such permit conditions.
- 10.05. For thermal treatment facilities for which operating permits are required, the permittee may treat only hazardous wastes specified in the permit and only under operating conditions specified in the permit except:
- (a) In approved trial burns under Section 20; or
 - (b) Under exemptions pursuant to Subsection 5.05.
- 10.06. Hazardous wastes other than those specified in a permit may be thermally treated 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.

Section 11. Monitoring and Inspections

11.01. The complete thermal treatment process and associated equipment (pumps, valves, conveyors, pipes, etc.) must be inspected at least daily for leaks, spills, and fugitive emissions. All emergency waste feed cut-off controls and system alarms must be checked daily to verify proper operation.

11.02. The owner or operator must conduct, as a minimum, the following monitoring when thermally treating hazardous waste:

- (a) For existing thermal treatment processes;
 - (1) Existing instruments which relate to

temperature and emission control (if an emission control device is present) must be monitored at least every fifteen (15) minutes. Appropriate corrections to maintain steady-state or other appropriate thermal treatment conditions must be made immediately either automatically or by the operator. Instruments which relate to temperature and emission control would normally include those measuring waste feed, auxiliary fuel feed, treatment process temperature, and relevant process flow and level controls.

(2) The stack plume (emissions), where present, must be observed visually at least hourly for normal appearance (color and opacity). The operator must immediately make any indicated operating corrections necessary to return any visible emissions to their normal appearance.

(b) For new, modified, or reconstructed thermal treatment units, other than incinerators, instruments which relate to process or emission control must be monitored as specified in the facility's permit.

(c) For new incinerators:

(1) Combustion temperature, waste feed rate, and air feed rate must be monitored on a continuous basis.

(2) Carbon monoxide (CO) must be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere.

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

11.04. 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 waste 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 Thermal Treatment Facilities

13.01. The owner or operator of a hazardous waste thermal treatment facility shall maintain a log of operation containing the following information:

- (a) Inspection data under Subsection 11.01; and
- (b) Monitoring data required under Subsection 11.02;

and

- (c) Waste analysis data specified under Subsection 11.03; and

(d) The quantity of waste thermally treated per day.

This information may be recorded in the operating record required pursuant to Subsection 8.05.04 of the DNR Regulations.

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

13.03. The owner or operator shall retain records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation) 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 application. This period may be extended by 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.

Section 14. Reports and Testing

14.01. At such reasonable time as the Director may designate, the operator of any thermal treatment 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 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 test. 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

may conduct such tests as he may deem necessary to evaluate hazardous waste emissions other than those noted above.

Section 15. Noncompliance Reporting

15.01. The permittee shall report to the Director all instances of noncompliance as follows:

- (a) Failure to complete a construction element. When the owner has failed to complete, by the date specified in his permit, an element of a compliance schedule involving either planning or construction (for example, award of a contract, preliminary plans), or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required element of the schedule within forty-five (45) days from the date of a compliance schedule report is due under the permit; or
- (b) Whenever the permittee has violated an operating requirement and has not returned to compliance within one (1) working day; or
- (c) Significant permit noncompliance or other event(s) such as explosions, and process upsets which result in the discharge of hazardous pollutants to the atmosphere which may endanger health or the environment.

15.02. The permittee shall orally report to the Director all instances of noncompliance described in Subsection 15.01(c) within twenty-four (24) hours of the occurrence. The following information shall be supplied:

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

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

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

(d) Name and quantity of material(s) involved; and

(e) The extent of injuries, if any; and

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

(g) Steps taken or planned to correct the noncompliance; and

(h) The anticipated time the incident is expected to continue; and

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

15.03. Within five (5) days of the occurrence the permittee shall submit in writing all information required under Subsection 15.02 including any additional procedures to prevent recurrence of the noncompliance.

Section 16. Modification, Construction, or Renewal Permit
Applications

16.01. No person shall construct a new hazardous waste treatment 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 construction permit from the Director.

16.02. No person shall modify or reconstruct an existing hazardous waste treatment or disposal facility which discharges, or may discharge, hazardous waste to the atmosphere prior to submitting revised Part A and Part B permit applications and obtaining a modification or reconstruction permit from the Director. The following actions constitute a modification:

(a) When there are material and substantial alterations or additions to the facility or activity which occurs after the effective date of this regulation and which may justify the application of new or different operating requirements; or

(b) If the Director has received information pertaining to circumstances or conditions existing at the time a permit was issued that were not included in the administrative record and would have justified the application of different permit conditions; or

(c) The standards of regulations on which a 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 cause only as follows:

(1) For promulgation of amended standards or regulations, when:

(i) The permit conditions requested to be modified were based on a promulgated hazardous waste regulation, and

(ii) The Commission has revised, withdrawn, or modified that portion of the regulation on which the permit conditions were based, or

(2) For judicial decision, a court of competent jurisdiction has remanded and stayed state regulations, if the remand and stay concern that portion of the regulation on which the permit condition was based and a request is filed by the permittee within ninety (90) days of judicial remand; or

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

16.03. For a new hazardous waste treatment or disposal facility, the permittee may not commence treatment or disposal of hazardous waste; and for a facility being

modified or reconstructed, the permittee may not treat or dispose of hazardous waste in the modified or reconstructed 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 an authorized representative stating that the facility has been constructed, reconstructed, or modified in compliance with the permit; and

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

(2) Within fifteen (15) days of the date of receipt by the Director of the letter in Subsection 16.03(a) if the permittee has not received notice from the Director of his intent to inspect, prior inspection is waived and the permittee may commence treatment or disposal of hazardous waste.

16.04. All applications for new treatment or disposal facilities must be submitted one hundred-eighty (180) days before physical construction is expected to commence.

16.05. Any treatment 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.

16.06. For purposes of this regulation, granting of a construction permit shall establish, where applicable, the

basis for issuance of an operating permit.

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 site 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) Non-attainment program under the West Virginia Air pollution Control Act or the Federal Clean Air Act,

(4) National Emission Standards for Hazardous Pollutants (NESHAPS) pre-construction 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 topographic map (or other map if a topographic map is unavailable) extending at least one-quarter (1/4) mile beyond the property boundaries of the source, depicting the facility and each of the hazardous waste

treatment, storage, or disposal facilities; and

(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 3 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 8.02.04(b) of the DNR Regulations and, if applicable, 8.02.04(c) of the DNR Regulations; 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 9.01 and 9.02; 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). 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.), and

(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).

17.03. In addition to the information submitted under Subsections 17.01 and 17.02, hazardous waste incinerators must fulfill the requirements of Subsections 17.03(a), or 17.03(b), or 17.03(c):

(a) When seeking exception under Subsection 5.05 (ignitable waste only), the applicant must demonstrate that the waste is either:

(1) Listed as a hazardous waste under this regulation only because it is ignitable (Hazard Code I);
or,

(2) That the waste has been tested and meets only the ignitability characteristic, and shows no detectable concentrations of the hazardous constituents listed in Appendix VIII of the DNR Regulations; or

(b) Submit 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, 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 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", 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,

(ii) Type (i.e. rotary kiln, liquid injection),

(iii) Linear dimension 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 system,

(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, air feed rates, and carbon monoxide concentration, and

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

(6) The expected 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) Air feed rate,
 - (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 subsection; and
- (8) Hazardous waste analysis data, including that submitted in Subsection 17.03(c)(1), sufficient to allow the Director to specify as permit POHCs those constituents for which destruction and removal efficiencies will be required; and

17.04. The Director may exempt the applicant from a trial

burn if he determines, based upon the information submitted in accordance with 17.03(c), that the applicant's facility will comply with the performance standards in Section 8, facility requirements of Section 9, and such operating permit requirements to be specified in accordance with Section 10.

Section 18. Signatories to Permit Application, 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; or

(d) By a duly authorized representative as defined in Subsection 18.02.

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 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. Conditions Applicable to All Permits

The following conditions apply to all treatment and disposal permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations shall be given in the permit.

19.01. Duty to comply. The permittee shall comply with all conditions of his permit. Any permit non-compliance constitutes a violation of this regulation

and is grounds for enforcement action; for permit termination, revocation, and reissuance or modification; or denial of a permit renewal application.

- 19.02. Duty to reapply. If the permittee wishes to continue a regulated activity after the expiration date of his permit, he shall apply for, and obtain, a new permit.
- 19.03. Duty to halt or reduce activity. 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.
- 19.04. 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.
- 19.05. 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

19.09. 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:

(a) 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

(b) 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

(c) 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.

Section 20. Trial Burns

20.01. For the purpose of determining feasibility of compliance with hazardous waste incinerator performance standards, Section 8, and of determining adequate

incinerator operating conditions under Section 10, the Director may issue a trial burn permit to a facility to allow short-term operation of a hazardous waste incinerator.

20.02. The trial burn must be conducted in accordance with a trial burn plan prepared by the applicant and approved by the Director. The trial burn plan will then become a condition of the permit. The trial burn plan will 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 description of 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 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, or equivalent techniques approved by the EPA Administration, and

(5) A quantification of those hazardous constituents in the waste which may be designated POHC's based on data submitted from other trial or operational burns which demonstrate 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 20.05; and

(e) A detailed test protocol including for each waste identified, the ranges of temperature, waste feed rate, air feed rate, 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 20.05.

20.03. 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 section.

20.04. Based on the waste analysis data in the trial burn plan, the Director will specify as trial POHC's those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHC's will be specified by the Director based on his estimate of the difficulty of incineration of the constituents identified in the waste analysis, the concentration or mass in the waste feed, and, for wastes listed in Section 7, the hazardous waste constituent or constituents identified in Appendix VIII of the DNR Regulations.

20.05. 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 Subsection 20.05 (a) and (c) cannot reasonably be developed through other means.

20.06. Within forty-five (45) days after each trial burn, the applicant must submit to the Director the following information:

(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, CO₂, O₂, and hazardous combustion by-products; and

(c) A quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the trial POHCs; 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 hazardous waste contains more than 0.5 percent chlorine, a computation of chlorine removal efficiency; 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 air feed rates; and

(j) A continuous measurement of 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 of this regulation and to establish the operating requirements necessary to meet the performance standards.

20.07. 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 the results of all determinations required by Subsection 20.06. This

submission shall be made within forty-five (45) days upon completion of the test.

20.08. All data collected during any trial burn must be submitted within forty-five (45) days to the Director following completion of the trial burn.

20.09 All submissions required by this section shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or report.

Section 21. Permit Application Review Procedures

21.01. 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.

21.02. Permit applications must comply with the signature and certification requirements of Section 18.

21.03. The Director shall review for completeness each application for a construction permit within thirty (30) days. Each application for an operating permit shall 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

treatment or disposal process, 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. In addition, 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.

- 21.04. 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.
- 21.05. 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.
- 21.06. 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 21.03.
- 21.07. 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 inspection requirements under Section 11; and
- (3) Standards for treatment, storage, and disposal and other permit conditions under Section 8, 9, and 10 of this regulation.

21.08. Public notice of activities under Subsection 21.07 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 the paper 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

(3) 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.)

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

(a) Name and addresses 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 21.12 and 21.13 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.

21.10. In addition to the general public notices described in Subsection 21.09, 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 file will be available for inspection; and

(e) In addition, the Director shall transmit to DNR a copy of the general public notice, the fact sheet, the permit application, and the draft permit.

21.11. A fact sheet shall be prepared by the Director for each hazardous waste treatment 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,

(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. A description of the type of wastes, fluids, or pollutants shall include, but not be limited to, effects on public

health and the environment.

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

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

(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.

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

21.12. 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.

21.13. 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 the hearing shall be given as specified in Subsection 21.08.

21.14. In addition, at the time any final permit decision is issued, the Director shall issue a response to comments. This response 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.

21.15. (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 21.07.

(2) Prepare a revised fact sheet under Subsection 21.11 and reopen the comment period under Subsection 21.08 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 21.08 shall define the scope of the reopening.

21.16. 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 22. Transfer and Duration of Permits

22.01. A permit may be transferred by the permittee to a

new owner or operator only if the permit has been modified or revoked and reissued by the Director to identify the new permittee and incorporate such other requirements as may be necessary to comply with these regulations and the State Act.

22.02. Treatment or disposal operating permits shall be effective for ten (10) years from the date of issue. The Director may issue an operating permit for a duration that is less than the full allowable term under this subsection.

22.03. Trial burn and emergency permits shall be effective for a given term to be specified by the Director.

Section 23. Termination, Revocation and Modification of Permits

23.01. The Director may terminate, revoke, or modify an operating permit or deny renewal of an operating permit for the following reasons:

(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 notwithstanding compliance with the permit, the permitted activity poses a threat

to human health or the environment which can only be regulated to acceptable levels by such action by the Director.

23.02. The termination, revocation, or modification of a permit to operate, construct, or modify a facility 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 an operating, construction, or modification permit, the owner 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 for modification. 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.

Minor modifications may only:

- (a) Correct typographical error; and
- (b) Require more frequent monitoring or reporting

by the permittee; and

(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; and

(d) Change the owner or operator of a hazardous waste facility upon submission to the Director of a change of owner or operator application which shall be made upon such form and in such manner as determined by the Director.

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 thermal treatment of hazardous waste by a nonpermitted facility or hazardous waste not covered by the permit by a facility with an effective operating permit. The permittee need not comply with the conditions of an operating permit to the extent and for the duration such non-compliance 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 a public notice which shall be published by the permittee as a Class I-O notice in the local area 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 emergency permit,

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 thermal treatment facility must remove all hazardous waste and hazardous waste residues (including, but not limited to ash, scrubber water, and scrubber sludges) from the thermal treatment process.

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.

- 27.04. The owner or operator of an existing hazardous waste incinerator for which the Director denies issuance of a permit shall develop and submit to the Commission, within thirty (30) days of notification of said denial, an acceptable compliance program for the attaining and maintaining of the requirements of this regulation.
- 27.05. In the event an owner or operator of an existing hazardous waste incinerator which does not meet the requirements 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 treatment 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.

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 effecting 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 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 amendment which has 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 management 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 or Reconstructed Thermal Treatment Facilities

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

| | |
|--|-------|
| Treatment design capacity less than 1000 tons/yr | 2,500 |
|--|-------|

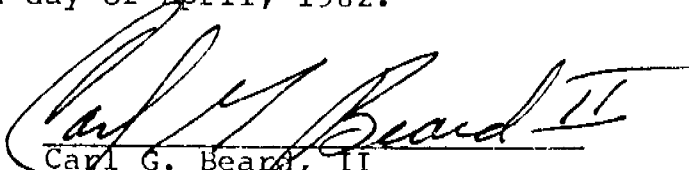
B. Modified or Renewed Thermal Treatment

| | |
|-------------------|---------|
| <u>Facilities</u> | \$1,000 |
|-------------------|---------|

Section 31. Effective Date

Regulation XXV (1982) shall become effective May
8, 1982.

The foregoing is a true and correct copy of the West
Virginia Air Pollution Control Commission Regulation XXV
(1982) as adopted on the 6th day of April, 1982.


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