

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

Form #1

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2001 JUN -8 P 2:49

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WVDEP-Division of Air Quality TITLE NUMBER: 45
RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code 22-5-1 et seq. + 22-18-1 et seq.
AMENDMENT TO AN EXISTING RULE: YES NO
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 12, 2001 TIME: 6:00 p.m.

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

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John A. Benedict, Deputy Chief

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

Division of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

10.40

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:

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

3. Objectives of These Rules:

Amendment of this rule is sought to adopt by reference the implementation of the D.C. Circuit Court of Appeals' order which vacated the Notice of Intent to Comply provision of EPA's rules relating to the standards for hazardous waste combustors(66 FR 24270; 5/14/01). The proposed rule also deletes federal regulations inapplicable to sources in West Virginia and makes minor changes related to 33CSR20. The proposed rule changes are important for EPA approval/authorization of the WV RCRA Hazardous Waste Management Program.

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

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

See section 2.

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

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

C. Economic Impact on Citizens/Public at Large.

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

Date: _____

Signature of Agency Head or Authorized Representative:

DEPARTMENT OF ENVIRONMENTAL PROTECTION**BRIEFING DOCUMENT**

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

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

B. SUMMARY OF RULE:

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

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The current 45CSR25 incorporates by reference certain provisions of the federal counterpart regulations effective through July 10, 2000. The proposed revisions to this rule will update the rule by incorporating the counterpart federal regulations effective through May 14, 2001, which includes a federal regulation vacating the Notice of Intent to Comply provision for hazardous waste combustors (66FR24270, May 14, 2001). In addition, the proposed rule changes are required to maintain consistency with the Division of Waste Management's current rule (33CSR20) and with the current federal regulations. The consistency of 45CSR25, 33CSR20 and federal regulations is important for final authorization of the WV State RCRA Hazardous Waste Management Program.

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

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division of Air Quality proposes that the rule incorporate by reference the federal counterparts.

Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

Briefing Document**Page 2****E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with §22-1A-1 and 3(c,) the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its May 29, 2001 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. Their comments are contained in the attached minutes.

45CSR25

FILED

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

2001 JUN -8 P 2:53

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 25

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

§45-25-1. General.

1.1. Scope.

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

1.1.b. The requirements of this rule apply to all owners and operators of hazardous waste treatment, storage, and disposal facilities as provided in the federal rules that are incorporated by reference herein.

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

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

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

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

1.3. Filing Date. -- ~~June XX, 2001.~~

1.4. Effective Date. -- ~~July 1, 2001.~~

1.5. Incorporation By Reference.

1.5.a. This rule incorporates by reference the provisions contained in the Code of Federal Regulations as listed in Table 25-A. Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will for purposes of this rule, be construed as that version which was in effect as of July 1, ~~1999~~2000.

1.5.b. This rule also incorporates by reference the provisions contained in 33 CSR 20, effective July 1, ~~2000~~ 2001, except for any provisions in 33 CSR 20 which incorporate by reference the Code of Federal Regulations.

1.5.c. This rule also incorporates by reference the provisions of 40 CFR Parts ~~260, 261, 262, 264, 265, 266, and 270~~ as amended and finalized in ~~64 Federal Register 52828 (September 30, 1999), 64 Federal Register 63209 (November 19, 1999) and 65 Federal Register 42292 (July 10, 2000).~~66 Federal Register 24270 (May 14, 2001).

§45-25-2. Definitions.

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

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

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

2.4. "BACT", 'Best Available Control Technology' means an emissions limitation based on the maximum degree of reduction for each pollutant which would be emitted from any hazardous waste treatment, storage or disposal facility which the ~~Director~~Secretary, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such facility through application of production processes or available methods, systems, or techniques. If the ~~Director~~Secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

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

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

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

2.8. "~~Director~~ Secretary" means the Secretary ~~Director~~ of the West Virginia ~~Division~~ Department of Environmental Protection or such other person to whom the ~~Director~~-Secretary has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

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

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

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

2.12. "Infectious Medical Waste" shall have the meaning ascribed to it in 64 CSR 56 "Infectious Medical Waste", (July 1, 1999), promulgated by the Division of Health.

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

2.14. "Pathological Waste Incinerator" means an incinerator used to thermally treat infectious medical waste.

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

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

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

Other words or phrases not herein defined and used in this rule shall have the meaning ascribed in W. Va. Code §§22-5-1 et seq., or W. Va. Code §§22-18-1 et seq., or 33 CSR 20 "Hazardous Waste Management Regulations" governing the State Hazardous Waste Management Act.

§45-25-3. Adoption By Reference.

3.1. Definitions, lists, tables, appendices, conditions, or requirements from 33 CSR 20 "Hazardous Waste Management Rule", effective July 1, ~~2000~~ 2001, are hereby adopted by reference,

except for any provisions in 33 CSR 20 which incorporate by reference the Code of Federal Regulations.

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

3.2. Unless otherwise indicated, the provisions contained in the Code of Federal Regulations, effective July 1, ~~1999~~ 2000, as listed in Table 25-A, are hereby adopted by reference, with the following modifications:

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

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

3.2.c. Whenever the term "Environmental Protection Agency" is used the term also means the West Virginia Division Department of Environmental Protection.

3.2.d. The distance provisions of 40 CFR 265.382 apply only to the open burning or open detonation of military explosives in a manner that presents an uncontrolled fragment release hazard. The applicable distance provisions of the American Table of Distances for Commercial Explosives, effective June 19, 1991, and of the Department of Defense Contractors Safety Manual for Ammunition and Explosives (DOD 4145.26-M), as amended April 11, 1988, apply otherwise.

§45-25-4. Facility Requirements.

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

4.1.a. Hazardous Waste Management Program under RCRA and 33 CSR 20;

4.1.b. Prevention of Significant Deterioration (PSD) Program under 45 CSR 14 or the Federal Clean Air Act;

4.1.c. Nonattainment program under West Virginia DEP, Office of Air Quality or the Federal Clean Air Act and 45 CSR 19;

4.1.d. National Emission Standards for Hazardous Air Pollutants (NESHAP) preconstruction approval under 45 CSR 15, 45 CSR 34 or the Federal Clean Air Act;

4.1.e. Standards of Performance for New Stationary Sources under 45 CSR 16 or the

Federal Clean Air Act; and

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

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

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

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

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

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

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

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

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

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

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

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

dispersal of the waste.

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

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

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

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

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

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

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

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

4.12.a. Process turn-arounds;

4.12.b. Cleaning of process equipment;

4.12.c. Planned process shutdowns; and

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

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

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

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

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

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

4.13.b.1. Meteorological data, and

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

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

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

4.13.c.1. Topographic considerations,

4.13.c.2. Population distributions,

4.13.c.3. Population activities, and

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

4.13.d. Consequences of exposure, including:

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

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

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

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

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

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

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

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

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

4.14.e. Shall be accompanied by public notice as described under section 7 of this rule and

shall include the following:

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

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

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

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

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

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

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

§45-25-5. Permit Process

5.1. Pre-application Public Meeting and Notice

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

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

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

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

5.1.d.1. The applicant shall provide public notice in all of the following forms:

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

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

5.1.d.1.C. *A broadcast media announcement.* The applicant shall broadcast a notice, fulfilling the requirements in subsection 5.1.5.d.2. of this section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the ~~Director~~ Secretary.

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

5.1.d.2. The notices required under subsection 5.1.d.1. of this section must include:

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

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

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

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

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

5.2. Public Notice Requirements at the Application Stage

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

5.2.b. Notification. The ~~Director~~ Secretary shall provide public notice as required in this section 5.2. when a Part B permit application has been submitted. The ~~Director~~ Secretary shall provide public notice to:

5.2.b.1. The applicant;

5.2.b.2. All persons on a mailing list developed under 5.8.d.1.D., and

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

5.2.b.4. Any person otherwise entitled to receive notice under subsection 5.2.6.b. of this rule may waive the right to receive notice for any classes and categories of permits.

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

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

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

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

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

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

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

5.2.d. Concurrent with the notice required under section 5.2.b. of this section, the ~~Director~~ Secretary must place the permit application and any supporting documents in a location accessible

to the public in the vicinity of the facility or at the permitting agency's office.

5.3. Information Repository

5.3.a. *Applicability.* The requirements of this section apply to all applications seeking West Virginia hazardous waste management permits for hazardous waste management units.

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

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

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

5.3.e. The Director Secretary shall specify requirements for informing the public about the information repository. At a minimum, the Director Secretary shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

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

5.4. Application for a Permit

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

5.4.b. The Director Secretary shall review every application for completeness. Each application submitted by a new hazardous waste management facility, should be reviewed for completeness by the Director Secretary within 30 days of its receipt. Each application submitted by an existing hazardous waste management facility (both Part A and Part B of the application),

should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Director Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director Secretary shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Director Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Director Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director Secretary may request additional information from the applicant but only when necessary to clarify, modify or supplement previously submitted materials. Request for such additional information will not render an application incomplete.

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

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

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

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

5.4.f.1. Prepare a draft permit;

5.4.f.2. Give public notice;

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

5.4.f.4. Issue a final permit.

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

5.5.a. Permits may be modified, revoked and reissued, or terminated either at the request of an interested person (including the permittee) or upon the Director Secretary's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR §§ 270.41 or 270.43. All requests shall be in writing and shall contain facts or reasons supporting the request.

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

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

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

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

5.5.c. If the Director Secretary tentatively decides to terminate a permit under 40 CFR § 270.43, he or she shall issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit which follows the same procedures as any draft permit prepared under section 5.6.

5.6. Draft Permits.

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

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

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

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

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

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

5.6.c.4. Standards for treatment, storage, and/or disposal and other permit conditions

under 40 CFR §270.30.

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

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

5.7. Fact Sheet

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

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

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

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

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

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

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

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

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

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

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

5.8. Public Notice of Permit Actions and Public Comment Period

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

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

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

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

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

5.8.d. Methods. Public notice of activities described in section 5.8.a. of this section shall be given by the following methods:

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

5.8.d.1.A. The applicant,

5.8.d.1.B. Any other agency which the ~~Director~~ Secretary knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act or West Virginia Code §22-5-1 et. seq., NPDES, 33 U.S.C. §1344, or sludge management permit for the same facility or activity;

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

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

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

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

5.8.d.1.D.iii. Notifying the public of the opportunity to be put on the mailing

list through periodic public in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. The ~~Director~~ Secretary may update the mailing lists from time to time by requesting written indications of continued interest from those listed. The ~~Director~~ Secretary may delete from the lists the name of any person who fails to respond to such request.)

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

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

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

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

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

5.8.e. *All public notices.* All public notices issued under this section shall contain the following minimum information:

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

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

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

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

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

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

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

5.8.f. *Public notices for hearings.* In addition to the general public notice described in section 5.8.e. of this section, the public notice of a hearing shall contain the following information:

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

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

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

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

5.9. Public Comments and Requests for Public Hearings

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

5.10 Public Hearings

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

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

5.10.c. The ~~Director~~ Secretary shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under section 5.8.c.; whenever possible the ~~Director~~ Secretary shall schedule a hearing under this section at a location in convenient to the nearest population center to the proposed facility.

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

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

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

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

5.11. Reopening of the Public Comment Period

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

5.11.a.1. Prepare a new draft permit, appropriately modified, under section 5.6. of this rule.

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

5.11.a.3. Reopen or extend the comment period under section 5.11. of this rule to give interested persons an opportunity to comment on the information or arguments submitted.

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

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

5.12. Issuance and Effective Date of Permit

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

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

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

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

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

5.13. Response to Comments

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

5.13.a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

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

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

5.14. Administrative Record

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

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

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

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

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

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

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

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

5.14.b.2. All comments received during the public comment period provided under subsection 5.5. of this rule (including any extension or reopening under subsection 5.11. of this rule);

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

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

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

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

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

5.14.b.8. The final permit.

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

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

5.15. Public Access to Information.

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

5.15.b. It shall be the responsibility of the person claiming any information as confidential under the provision of subsection 5.15. of this rule to comply with the requirements of 45CSR31.

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

§45-25-6. Exclusions and Exemptions.

6.1. Wastes and/or materials excluded in 33 CSR 20, are also excluded from the requirements of this rule.

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

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

§45-25-7. Application Fees.

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

ACTIVITY FEES

a.	Hazardous Waste Management Facilities	
	Treatment design capacity more than 1,000 ton/yr	\$5,000
	Treatment design capacity less than 1,000 ton/yr	\$5,000
b.	Class 2, 3 Modifications or Renewals of Permits and 40 CFR 270.41 for Hazardous Waste Management Facilities	\$1,000
c.	Class 1 Modifications	\$ 500

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

§45-25-8. Inconsistency Between Rules.

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

45CSR25

TABLE 25-A

<u>Item No.</u>	<u>CFR No.</u>	<u>Part No.</u>	<u>Subpart No.</u>	<u>Title</u>
1.	40 CFR	- 264, 265	- O	- Incinerator
2.		- 270.19	- B	- Specific Requirements for Incinerators
		- 270.42(j)	- D	- Permit Modification at The Request of the Permittee
3.		270.42	Appendix	- Appendix I
		- 270.62, 270.62(b)(6)	F	- Hazardous Waste Incinerator Permits
		- 270.62(d)		- Changes During Interim Status
		- 270.72(b)(8)	G	
4.	40 CFR	- 264	- X	- Miscellaneous Units
5.		- 270.23	- B	- Specific Requirements for Miscellaneous Units
6.	40 CFR	- 264, 265	- AA	- Air Emission Standards for Process Vents
7.		- 270.24	- B	- Specific Requirements for Process Vents
8.	40 CFR	- 264, 265	- BB	- Air Emission Standards for Equipment Leaks
9.		- 270.25	- B	- Specific Requirements for Equipment Leaks
10.	40 CFR	- 264, 265,	CC	- Organic Air Emission Standards for Tanks
		- 264.179, 265.178	I	- Surface Impoundments,
		- 264.200, 265.202	J	- and Containers
		- 264.232, 265.231	K	- Appendix VI
		- 265	Appendix	

<u>Item No.</u>	<u>CFR No.</u>	<u>Part No.</u>	<u>Subpart No.</u>	<u>Title</u>
11.	40 CFR	- 270.14(b)(5) 270.27	B -	Specific Requirements for Air Emissions Control for Tanks, Surface Impoundments and Containers
12.	40 CFR	- 265	- P -	Thermal Treatment
13.	40 CFR	- 266	- H -	Hazardous Waste Burned in Boilers and Industrial Furnaces
			- Appendices -	Appendix 1 to XIII
14.	40 CFR	- 270.22 -	- B -	Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
15.	40 CFR	- 270.66 - 270.66(d)(3) 270.66(g)	- F -	Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
16.	40 CFR	- 279.23	- C -	On-site Burning In Space Heater
17.	40 CFR	- 279.60 - 279.61 - 279.62 279.63	- G -	Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery
18.	40 CFR	- 270.14(b)(22)- 270.24(b)(5) - 270.1(c)(2)(viii)(C)	B - - A -	Part B application General Requirements General Information
19.	40 CFR	- 270.30(m)	- B -	Information repository
20.	40 CFR	- 261.6(c)(1) - 261.4 - 261.38 -	- A - - D -	Requirements for Recyclable Materials Exclusion Comparable/Syngas Fuel Exclusion

21.	40 CFR	-	262.34(a)(1)(i) &(ii)-	C	-	Accumulation Time
22.	40 CFR	-	260.11	- B	-	References
23.	40 CFR	-	264.15(b)(4)	- B	-	General Inspection Requirements
24.	40 CFR	-	264.73(b)(6)	- E	-	Operating Records

treatment system during the initial and any subsequent performance tests.

(m) * * *

(2) * * *

(ii) Compliance with the segregation requirements specified in § 63.446(c)(3) is demonstrated if the total HAP mass determined in paragraph (m)(2)(i) of this section is equal to or greater than the appropriate mass requirements specified in § 63.446(c)(3).

* * * * *

[FR Doc. 01-12048 Filed 5-11-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 270

[FRL-6978-4]

NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Implementation of court orders.

SUMMARY: In *Chemical Manufacturers Association v. EPA*, 217 F. 3d 861 (D.C. Cir. 2000), the court vacated the Notice of Intent to Comply (NIC) provisions of EPA's rules relating to the standards for hazardous waste combustors. Today's action takes the ministerial step of removing these provisions from the Code of Federal Regulations (CFR). Since the vacated NIC provision is also referenced in the permit modification procedures of RCRA in Part 270, today's action modifies this reference as well. In addition, at EPA's request, the D.C. Circuit vacated certain parameter limits of baghouses and electrostatic precipitators in order for EPA to solicit further comment on these provisions. *CKRC v. EPA*, no. 99-1457 (Order of April 5, 2001). Today's action likewise takes the ministerial step of removing these provisions from the CFR.

DATES: This rule is effective on May 14, 2001.

ADDRESSES: The official record (i.e., the public docket) of this rulemaking is identified as Docket Number F-2001-RC3F-FFFFF, located in RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. To review docket materials or

for information on accessing an electronic copy of those materials, please call 703-603-9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost \$ 0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 5 pm, Eastern Standard Time. For more information on specific aspects of this rule, contact Mr. Shiva Garg at 703-308-8459, garg.shiva@epa.gov, or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Vacatur of Requirements for Early Cessation of Hazardous Waste Burning

In anticipation of establishing revised emission standards for cement kilns and incinerators burning hazardous waste, EPA promulgated at 63 FR 33821-2 (June 19, 1998) that sources which elect to stop burning hazardous waste rather than comply with the new emission standards must do so within two years of the effective date of the emission standards (the so-called "early cessation" requirement). These regulations were later recodified as 40 CFR 63.1206(a)(2)(i) and 1211(b)(2)(iii) and (5), at 64 FR 53038, September 30, 1999. Sources that continued to burn hazardous wastes but seek to comply with the new emission limits, such as by improving their emission control capabilities, have three years to comply. 40 CFR 63.1206(a)(1). Both methods of compliance were implemented by submission of two reporting requirements: a Notification of Intent to Comply ("NIC"), and a Progress Report. 40 CFR 63.1210(b), 63.1211(b), and 63.1212.

In the case of sources intending to comply by meeting the emission standards, submittal of a NIC is a condition required for eligibility for accelerated modification of the source's existing permit under the Resource Conservation and Recovery Act ("RCRA"). 40 CFR 70.42(j)(1). These accelerated permit modifications (so-called "Class I modifications") allow sources to modify their existing hazardous waste permits issued pursuant to RCRA by simply submitting an application to the permitting authority rather than waiting for prior

Agency approval and going through public hearings (63 FR 33803, June 19, 1998). Permit modifications are necessary because, unless modified, existing RCRA permits limit the ability of sources to modify their design or operation, and such modifications may be necessary to comply with the Clean Air Act emission standards. *Id.* Accelerated permit modifications are needed (where modifications are needed at all) because usual permit modification procedures entail prior agency approval and public hearings, an often lengthy process which could preclude compliance with the emission standards within the three years allowed (with a possible one-year extension) under section 112(i)(3) of the Clean Air Act (42 U.S.C. 7412(i)(3)), forcing facilities to choose between violating RCRA and violating the Clean Air Act. EPA therefore amended its permitting rules to use the accelerated Class I modification procedures to amend permits to allow sources to make technology changes—such as installation of new air pollution control devices or process modifications—needed to comply with the new air emission standards, provided, as noted above, that the "[f]acility * * * must comply with the Notification of Intent to Comply (NIC) requirements * * * before a permit modification can be requested under this section." 40 CFR 270.42(j)(1) and Appendix I, entry L (9) to § 270.42.

In *Chemical Manufacturers Ass'n v. EPA*, 217 F. 3d 861 (D.C. Cir. 2000) the panel majority held that EPA possesses legal authority to impose an early cessation requirement, but held further that the agency had impermissibly interpreted the statute to allow it to impose the requirement without a showing that it would lead to human health or environmental benefit (benefits such as "the amount of hazardous waste produced, the amount of hazardous waste burned, or the levels of hazardous air pollutant emissions"). 217 F. 3d at 865, 866-67.¹ The Court therefore vacated the early cessation requirement. The Court further held that because it could not determine whether EPA would have promulgated the NIC and Progress Report reporting requirements absent an early cessation provision, the provisions were so

¹ Judge Sentelle dissented, arguing that since the early cessation requirement was in accord with the express statutory command for compliance with section 112 emission standards "as expeditiously as practicable", it was not arbitrary and capricious. CAA section 112(i)(3)(A), 42 U.S.C. 7412(i)(3)(A). 217 F.3d at 868-69.

interlinked as to require vacatur as well. *Id.* at 867-68.

In response to EPA's Motion to Withhold Issuance of Mandate (EPA, Motion to Stay Issuance of Mandate, filed Sept. 8, 2000 in *Chemical Mfrs. Ass'n v. EPA*, no. 99-1236 (D.C. Cir.), the Court agreed to stay issuance of its mandate for a long enough period to allow affected sources to submit Notices of Intent to Comply so that they would be eligible for Class I permit modifications. EPA worked closely with the regulated community to assure that all sources submitted NICs before the Mandate issued.

This action takes the ministerial step of directing the Office of the Federal Register to remove the vacated provisions from the CFR.

II. Vacatur of Compliance Assurance Monitoring Requirements for Baghouses and Electrostatic Precipitators

The final rule requires sources to establish and monitor limits on the following parameters for electrostatic precipitators (ESPs) and baghouses for compliance assurance: (1) Minimum power (kVA) per field of an ESP; and (2) minimum and maximum pressure drop for each cell of a baghouse. See §§ 63.1209(m)(1)(ii) and (iii). EPA filed a motion with the D.C. Circuit to vacate this provision in order to allow a considered opportunity for notice and comment on the issue (see *CKRC v. EPA*, no. 99-1457. EPA Motion of November 14, 2000). The court granted EPA's motion on April 5, 2001, and ordered the vacatur of the above two paragraphs of § 63.1209. In accordance with the above, we are deleting these two paragraphs of the regulation. Permit writers are, of course, authorized under the provisions of § 63.1209(g)(2), to adopt operating parameters for baghouses and ESPs on a case-by-case basis if "necessary to document compliance with the emission standards."

III. Implementation Issues: Sources' Ability To Request a RCRA Permit Modification Using the Streamlined Modification Procedure of § 270.42(j)

In 40 CFR 270.42(j)(1), the regulations require facilities to comply with the NIC requirements of 40 CFR 63.1211 before they can use the streamlined permit modification procedures. This requirement enhances the public participation procedures for these streamlined Class 1 modifications which otherwise would have been classified as Class 2 and Class 3 modifications. Facilities were required to submit their NICs by October 2, 2000,

and EPA worked closely with the regulated community to assure that all sources intending to continue operating submitted these NICs. The court issued its mandate to vacate the NIC provisions on October 11, 2000. Since the mandate did not go into effect until after facilities were required to submit their NICs, we have determined that the court's action does not impact a facility's ability to request a RCRA permit modification using the streamlined procedures of 40 CFR 270.42 (j), provided, of course, they submitted the NIC as required by the rule. As long as a facility complied with the NIC provisions, the facility met the requirements in 40 CFR 270.42(j)(1) and is therefore eligible for the streamlined modification process.

We also note, as a matter of technical drafting, that in 40 CFR 270.42(j)(1), the ability to seek a fast-track permit modification by filing a NIC (as referenced by 40 CFR 63.1211) is no longer available. The NIC requirements were promulgated in the fast-track rule (63 FR 33782, June 19, 1998) and placed in 40 CFR 63.1211. In the final rule (64 FR 52828, September 30, 1999), the NIC requirements were moved to 40 CFR 63.1210, but the corresponding reference in 40 CFR 270.42(j)(1) was not changed through oversight. 40 CFR 270.42(j)(1) should have been conformed to reference the NIC requirements of 40 CFR 63.1210.

Although the NIC requirements in 40 CFR 63.1210 are now being removed from the regulations, the substantive requirement to have submitted a NIC in order to use the fast-track permitting option still remains a part of the RCRA rule as explained above. In today's rulemaking, we are therefore clarifying the language in 40 CFR 270.42(j)(1) to reference 40 CFR 63.1210 that was in effect prior to July 1, 2000 and published in "40 CFR Part 63 Revised as of July 1, 2000". Thus, facilities that want to use streamlined permit modification process must have complied with the NIC provisions as specified in the now-vacated § 63.1210(b).

IV. Administrative Requirements

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B),² provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an

² The provisions of 5 U.S.C. 553(b)(B) of the Administrative Procedure Act apply to this action, even though it arises under the Clean Air Act (to which section 553 normally does not apply). See Clean Air Act section 307(b)(1) (final sentence).

opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because this action is in direct response to the Court's Mandate, and implements that Mandate. With respect to the rules relating to operating parameters for baghouses and ESPs, the rule implements the Court's order vacating those provisions. Thus, notice and opportunity for public comment are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). For the same reason, EPA finds that there is good cause, within the meaning of 5 U.S.C. 553(d)(3), to make the rule immediately effective.

V. Regulatory Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule is also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards, thus the requirements of section 12(d) of National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear

legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to public interest. This determination must be supported by a brief statement, 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of May 14, 2001, for this rule. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

VII. Immediate Effective Date

As noted earlier, EPA is making this rule effective immediately. This rule adopts amendments which are purely technical, in that they implement the Court's mandate. Comment on such changes is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reason, there is good cause to make the rule effective immediately pursuant to 5 U.S.C. 553(d)(3).

List of Subjects

40 CFR Part 63

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

40 CFR Part 270

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

Dated: May 8, 2001.

Christine Todd Whitman,
Administrator.

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

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

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

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

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

2. Section 63.1206 is amended by revising paragraph (a)(1), removing paragraph (a)(2), and redesignating paragraph (a)(3) as (a)(2) to read as follows:

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

(a) * * * (1) *Compliance date for existing sources.* You must comply with the standards of this subpart no later than September 30, 2002 unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

§ 63.1209 [Amended]

3. Section 63.1209 is amended by removing and reserving paragraphs (m)(1)(ii) and (iii).

§ 63.1210 [Amended]

4. Section 63.1210 is amended as follows:
a. In the table to paragraph (a)(1) by removing the entry "63.1210(b) and (c)"; and

b. By removing paragraph (b) and (c) and redesignating paragraph (d) as (b).

§ 63.1211 [Amended]

5. Section 63.1211 is amended by removing paragraph (b) and redesignating paragraphs (c) through (e), as (b) through (d) respectively.

§ 63.1212 [Removed and Reserved]

6. Section 63.1212 is removed and reserved.

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

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

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

8. Section 270.42 is amended by revising paragraph (j)(1) to read as follows:

§ 270.42 Permit modifications at the request of the permittee.

* * * * *

(j) * * *

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that was in effect prior to May 14, 2001, (See 40 CFR Part 63 Revised as of July 1, 2000) in order to request a permit modification under this section.

* * * * *

[FR Doc. 01-12043 Filed 5-11-01; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-6950-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, Florida, (Tyco), formerly Advanced Quick Circuits, L.P., to exclude (or "delist") a certain hazardous waste from the list of hazardous wastes under RCRA regulation. Tyco generates the petitioned waste by treating liquid waste from Tyco's printed circuit board manufacturing processes. The waste so generated is a wastewater treatment sludge that meets the definition of F006. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency has concluded that Tyco's petitioned waste will not adversely affect human health and the environment. This action responds to Tyco's petition to delist this waste on a "generator-specific" basis from the hazardous waste lists, and to public

**WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

ADVISORY COUNCIL MEETING – MINUTES

Tuesday, May 29, 2001 ~ 1:00 p.m.
Second Floor Conference Room - Nitro

Attendees:

Advisory Council Members:

Michael O. Callaghan – Chairman
Lisa Dooley
Jackie Hallinan
Larry Harris
Bill Raney
Rick Roberts
Bill Samples

DEP:

Bill Adams
John Ailes
Dave Bassage
John Benedict
Bill Brannon
Laura Crowder
Mike Dorsey
Lewis Halstead

Randy Huffman
Pam Nixon
Ken Politan
Charlie Sturey
Allyn Turner
Dave Watkins
Karen Watson
Mike Zeto

CITIZENS:

Victoria Moore
Elaine Purkey
Freda Williams

The meeting was called to order at 1:00 p.m. by Chairman Michael O. Callaghan.

Welcome/Opening Remarks - Chairman Callaghan:

Chairman Callaghan opened the meeting by announcing that he had reorganized the West Virginia Department of Environmental Protection (WV DEP) and consolidated certain offices into four divisions: Division of Mining and Reclamation, Matt Crum, Director; Division of Waste Management, Ken Ellison, Director; Division of Water

Resources, Allyn Turner, Director; and Division of Air Quality, Director position currently vacant. Other appointments by Chairman Callaghan include Dave Bassage, Coordinator of Innovative Policy; Cap Smith, Head of Special Projects; and John Ailes, Special Advisor for Mining Affairs. Mr. Callaghan distributed a copy of May 29th news release, announcing the restructuring (see attached).

2001 Legislative Session Overview:

William E. Adams, Jr., Deputy Secretary, provided an overview of the 2001 legislative session. Mr. Adams commented that DEP was successful in getting all but two of their rules passed during the session, and he distributed a copy of a news release covering the scope of legislative action regarding DEP's rules (news release attached).

Presentation of 2002 Proposed Legislative Rules:

Office of Air Quality -

John Benedict presented rules 45CSR1 and 45CSR26 to the Council.
Karen Watson presented rules 45CSR 8, 9, 15, 16, 18, 25, 33 and 34.

Office of Mining and Reclamation -

Lewis Halstead presented rules 38CSR2 and 38 CSR 4.

Office of Waste Management -

Mike Dorsey presented rule 33CSR20.

Office of Water Resources -

Ken Politan presented rules 47CSR5A and 47CSR30.
David Watkins presented rules 47CSR57B and 47CSR13.
Allyn Turner - Discussed the anti-degradation legislation passed during the 2001 legislative session and the need to file any proposed 2002 rules after July 1, 2001 because the authority for the promulgation of this rule will not vest with the DEP until then.

Environmental Enforcement -

Mike Zeto presented the rule for Administrative Proceedings and Civil Penalty Assessment.

Upon conclusion of rules presentations, Randy Huffman, DEP Assistant Secretary, thanked everyone for coming and commented that the rules will be filed with the Secretary of State's office by Wednesday, June 06, 2001, for the thirty-day comment period and then go to public hearings. Cindy Lawson read the 2002 rules filing guideline and deadline dates. Mr. Huffman asked for guidance from the council members. A comment was made that the rules should be in the hands of the Advisory Council a week preceding the meeting and Mr. Huffman stated that this was the goal of the agency. With the legislative session beginning 30 days later this year, however, the process was delayed as an overlapping of final filing and pre-filing for 2002 could not be prevented.

Bill Raney, Council Member, made a motion that the Advisory Council acknowledges the submission and presentation of the 2002 rules. William Samples, Council Member, seconded the motion.

A motion to adjourn the meeting was made by Bill Raney and seconded by Larry Harris, Council Member. The meeting adjourned 3:50 p.m.

Attachments



News Release

Department of Environmental Protection
West Virginia

Release: May 29, 2001
For Information: (304) 759-0515

DEP program offices consolidated from eight to four; Crum to head mining office

CHARLESTON — The state's environmental protection agency is being reorganized into four primary regulatory divisions and a former federal prosecutor is taking over the mining office, the state's foremost environmentalist said Tuesday.

Under the change, four office heads, who will be called division directors, will report directly to DEP Secretary Michael O. Callaghan, the Cabinet secretary said.

They are directors of the Division of Air Quality, Division of Water Resources, Division of Waste Management and Division of Mining & Reclamation.

The reorganization takes in the current program offices of Abandoned Mine Lands & Reclamation, Air Quality, Environmental Remediation, Explosives and Blasting, Mining and Reclamation, Oil & Gas, Waste Management and Water Resources.

"These changes are long overdue and are necessary to make the entire structure of the new Department of Environmental Protection more manageable," Callaghan said.

The Legislature at the request of Gov. Bob Wise this year elevated the agency from the Division of Environmental Protection to department status and made Callaghan a Cabinet-level secretary.

"I want the agency head to be immediately accessible to those who are in critical decisionmaking positions," Callaghan said. "This is needed to respond to environmental problems promptly and for the complex process of issuing permits. These changes give the division heads more authority than the old chiefs had and I hope groups them together as environmental protectors rather than as eight entities doing their individual thing."

Callaghan also announced he has named Matthew B. Crum, an environmental lawyer with the U.S. Justice Department in Washington, as director of the mining office, taking over for John Ailes, who has been acting chief.

Crum, 35, who lives in Fairfax, Va., has been a lawyer in the environmental enforcement section for the Justice Department since 1998. He previously worked for the Division of Environmental Protection and The Nature Conservancy.

Ailes has been named as a special adviser for mining affairs and will report directly to Callaghan.

"Matt incorporates all the leading assets the agency needs to move the mining regulatory and permitting program forward," Callaghan said. "John Ailes will serve equally well in a key advisory capacity to the secretary. I am building a new mining program and am looking at least a decade into the future to set those plans in place."



News Release

Department of Environmental Protection
West Virginia

Release: May 29, 2001
For Information: (304) 759-0515

Reorg 2-2-2

Ken Ellison, who has been chief of the Office of Remediation, will become director of the waste office. Former Office of Waste Management Chief Cap Smith is joining Callaghan's staff as head of special projects. Office of Water Resources Chief Allyn Turner takes over the water division.

Callaghan is seeking a director for the Air Division after Skipp Kropp, former chief of the Office of Air Quality, submitted his resignation last week.

Dr. Dee Ann Staats, Ph.D, rounds out the staff reorganization. DEP has suffered for years by the lack of a formal science adviser, particularly in the areas over which Ellison will have control. Staats is being hired in the newly created position of science adviser and will deal primarily with Ellison's office.

Staats, 44, of South Charleston, earned an undergraduate degree in chemistry from West Virginia Wesleyan in 1979 and her doctorate in pharmacology toxicology from West Virginia University in 1987.

Callaghan has been promising changes in the top management of DEP since he took over the agency Feb. 13.

"This agency long has failed to adequately complete its mission," Callaghan said. "It has been plagued by faltering, indecision and a lack of self-confidence. The management structure has failed to meet the expectations and output of the 800 fine employees who have made every effort to do the right thing for the agency and properly perform its mission. It is time for management to support the effort of these quality employees."

Earlier, Callaghan named general counsel Bill Adams as his sole deputy secretary, eliminating two other deputy positions. He also named former Deputy Randy Huffman as assistant secretary.

Continuing to report directly to Callaghan will be Environmental Advocate Pam Nixon, Innovative Policy Director Dave Bassage, Enforcement Coordinator Mike Zeto, and the Public Information Office.

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Department of Environmental Protection

SECRETARY
Michael Callaghan

Asst. Secretary
Randy Huffman

Dep. Secretary
Bill Adams

**Division of
Air Quality**
(Vacant), Director

**Division of Water
Resources**
*Allyn Turner,
Director*

**Division of Waste
Management**
*Ken Ellison,
Director*

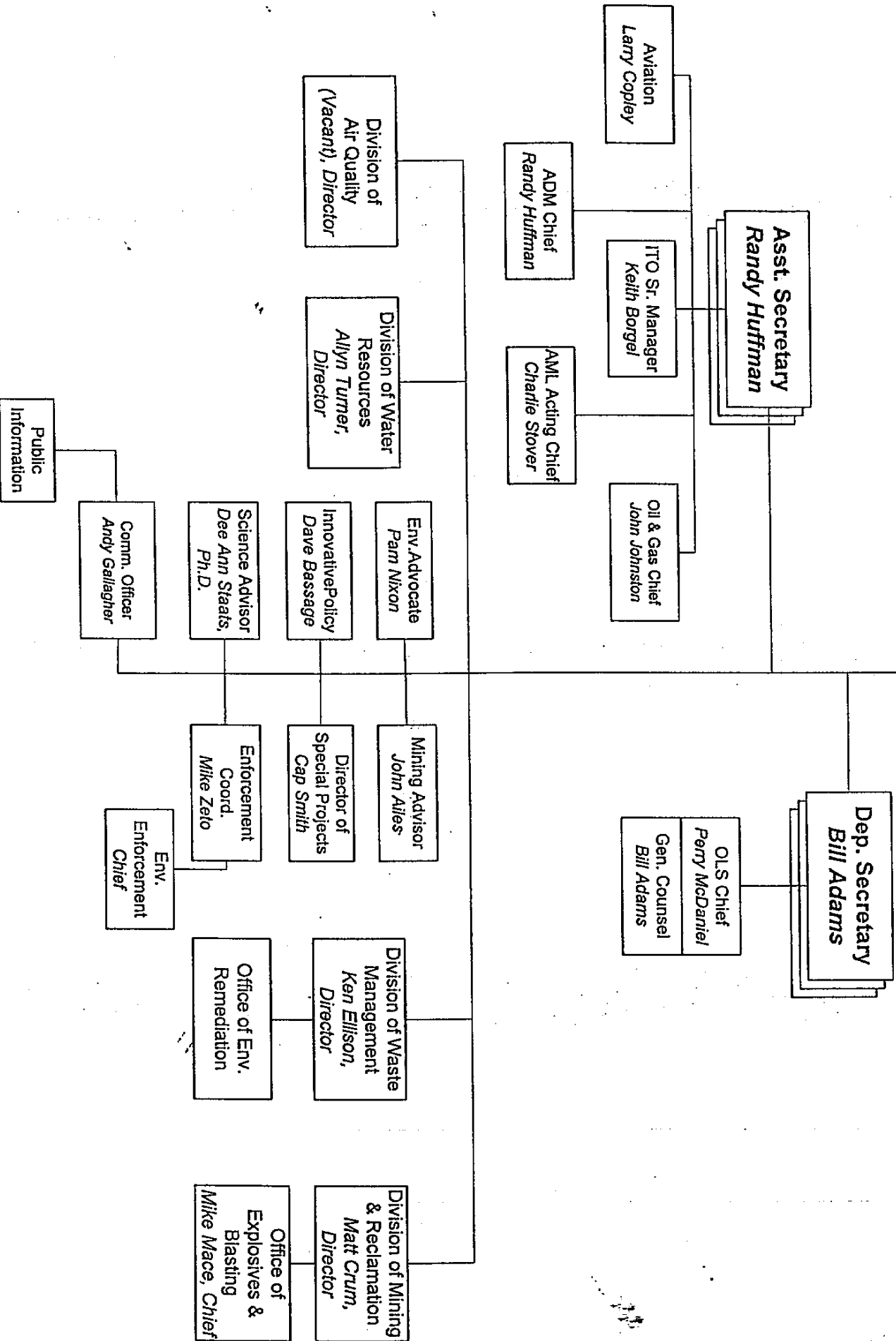
**Division of Mining
& Reclamation**
*Matt Crum,
Director*

DRAFT
5/23/01

Department of Environmental Protection

SECRETARY
Michael Callaghan

DRAFT
5/23/01





News Release

Department of Environmental Protection
West Virginia

Release: May 29, 2001
For Information: (304) 759-0515

Justice Department environmental lawyer to head up the DEP's mines office

NITRO — An environmental lawyer with the U.S. Department of Justice is taking over West Virginia's mining regulatory program, Department of Environmental Protection Secretary Michael O. Callaghan said Tuesday.

Matthew B. Crum, named chief of the Office of Mining and Reclamation, begins work June 11. He replaces John Ailes, who becomes a special adviser to Callaghan, focusing on mining issues.

Crum, 35, who lives in Fairfax, Va., has been a lawyer in the environmental enforcement section for the Justice Department since 1998. He previously worked for the Division of Environmental Protection and The Nature Conservancy.

He was lead counsel representing the federal government in the prosecution of civil enforcement cases under the Clean Water Act; the Clean Air Act; the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act.

"Matt incorporates all the leading assets the agency needs to move the mining regulatory and permitting program forward," Callaghan said. "We are extremely fortunate to attract a person of his ability and character to head this program, which has seen too much turbulence in recent years.

"I believe Matt will give the program the stability it needs to help Governor Wise fulfill his mission for West Virginia," Callaghan said.

"I recognize that the department is facing several complex and contentious issues regarding the mining program," Crum said. "I look forward to returning to the agency to directly address these challenges. My family and I are very pleased to be coming back to the state of West Virginia."

Crum also has been involved in negotiations with the regulated community to resolve environmental enforcement issues, with emphasis on the prevention of illegal discharge of pollutants into waterways, the improper handling or storage of hazardous wastes and the unpermitted emission of airborne contaminants; negotiations designed to resolve conflict with corporations and individuals without compromising the integrity of the environment

He has been involved in the management of litigation teams consisting of U.S. Environmental Protection Agency regional counsel and technical personnel.

From 1994 to 1997, Crum was a deputy chief for the Office of Legal Services for the former Division of Environmental Protection.



News Release

Department of Environmental Protection
West Virginia

Release: May 29, 2001
For Information: (304) 759-0515

Crum 2-2-2

He served as lead counsel before circuit courts and administrative tribunals regarding enforcement actions against numerous corporations and municipalities. He also defended agency permits.

In 1996, Crum was an acting deputy attorney general in Charleston and served as supervisor of operations of the energy and environment division. He was in the environmental and litigation departments of the Charleston law firm of Robinson & McElwee from 1991 to 1994.

Crum and Perry McDaniel, head of the DEP legal office, were on opposite sides during a longtime dispute over licensing of a pulp mill at Apple Grove on the Ohio River. The proposal eventually was abandoned. Crum, who was working for the DEP at the time, was defending the agency's issuance of the permit. McDaniel, who represented the challengers, opposed it.

"I thought he was fair and I got along fine with him," McDaniel said. "I believe Matt is a good choice to head up this important program and I look forward to working with him."

Crum won commendations in 1997 from the U.S. Attorney General for outstanding performance and invaluable service to the Justice Department relating to environmental enforcement and from the U.S. Environmental Protection Agency for environmental enforcement.

He previously served as director of development and communications for The Nature Conservancy of West Virginia in 1997.

Crum is a 1991 graduate of Washington and Lee University's College of Law and holds a political science undergraduate degree from Virginia Tech.

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News Release

Department of Environmental Protection
West Virginia

Release: May 29, 2001
For Information: (304) 759-0515

Science adviser position created and Staats added to staff

CHARLESTON – To beef up the science component of the Department of Environmental Protection, a toxicologist is being added to the agency staff, Cabinet Secretary Michael O. Callaghan said Tuesday.

“I am very pleased to announce Doctor Dee Ann Staats is joining the staff on June 1,” Callaghan said. She is a Ph.D.

“She will be an invaluable addition to help us with a number of complex health issues,” Callaghan said. “She will be the science adviser.” It is a newly created position attached to the secretary’s staff. Callaghan created the position to emphasize the importance of having a more science-orientation to the way DEP does business.

While Staats is part of the central office, she will be assigned to the critical area of the Office of Waste & Remediation, the unit that is attempting to bring back into production industrial sites that were polluted in the past.

“We have needed someone of Doctor Staats caliber for some time,” Waste & Remediation Director Ken Ellison said. “We will be able to use her expertise in a number of different areas. I am eager for her to begin work. With her, we now can start looking at environmental protection more from a health risk standpoint.”

Staats, 44, has been president of her own consulting firm, D.A. Staats Inc., since September 1991. She specialized in environmental and occupational toxicology, consulting nationwide for the federal government.

She is a native of West Virginia, however, and wanted to return to the state. Her brother, Ed Staats, is chief of operations for Gov. Bob Wise. Dee Ann Staats now lives in South Charleston.

“I am happy to be home in West Virginia,” Staats said. “I’m honored to contribute my expertise in environmental health in the service of her people.”

Staats earned her undergraduate degree in chemistry from West Virginia Wesleyan in 1979 and her doctorate in pharmacology toxicology from West Virginia University in 1987.

Environmental agency has successful legislative session

CHARLESTON – Lawmakers provided nearly \$1 million for water measurements, established new water protection standards and increased water pollution penalties during the 2001 session of the West Virginia Legislature.

The House of Delegates approved the state's budget 81-12 and the Senate on a vote of 27-0 Monday night to end the legislative session.

"We faced a number of serious and difficult challenges during this session and I believe came to the forefront in facing each," said Michael O. Callaghan, who was confirmed as DEP director by the Senate on a 34-0 vote.

"Governor Bob Wise was solidly behind our environmental initiatives and I want to personally thank him and the members of the House of Delegates and the state Senate for their steadfast support," Callaghan said Tuesday.

The new state budget, adopted in the extended session of the Legislature, includes \$946,000 to permit the DEP's Office of Water Resources to develop studies on impaired streams, a program commonly known as total maximum daily loads. The TMDLs determine how much pollution a stream can assimilate and still meet federal protection standards.

TMDLs will be used in the future to determine whether development can take place along impaired streams. The federal government had been doing the studies and the state wanted to assume control of them.

After a lengthy battle, legislators also adopted standards aimed at providing additional protections to more than 2,000 miles of trout and other high-quality streams in West Virginia.

The antidegradation legislation rewrote rules to prevent water sources in the state from being further polluted by industrial activity.

"We believe the proposal crafted by the DEP and pushed vigorously by Office of Water Resources Chief Allyn Turner is a good compromise that will be found acceptable by the U.S. Environmental Protection Agency," Callaghan said. "It will protect streams, provide for future protections, and still allow development."

A key element retained by DEP is a classification of a stream known as tier 2.5, which allows only limited additional wastes to be discharged on those waters. It is a higher standard than that found under federal law. The bill also allows for landowners to petition Callaghan for a redress of their complaints if they believe their water has been improperly classified.

EPA has indicated it supports the legislation.

This same bill also included a number of other rules changes the agency wanted that dealt with air, mining, hazardous waste, underground storage, blasting and other offices.

One of the proposals provides a limited exemption to the prohibition of disposing yard waste in landfills by allowing it only where no other option is available.

After a three-year push, the DEP was successful, with the cooperation of business, particularly the West Virginia Manufacturers Association, and conservation groups, in increasing penalty limits for water pollution violations.

The proposal, advocated by Chief Inspector Mike Zeto, brings the state in line with surrounding states and had been sought by EPA.

It takes the maximum potential daily fine to \$25,000 from the current \$10,000.

Legislation also was approved to change the division into the Department of Environmental Protection, to make Callaghan a Cabinet-level secretary and give him a pay raise.

The change reflects the importance Governor Wise places on the DEP in protecting the state's environment and in also furthering business development.

Legislation to provide change in last year's blasting laws to ensure homeowners receive copies of preblast surveys also was enacted. The surveys are done prior to blasting to document whether the explosions have damaged a residence or water sources. The federal government sought the changes. The measure also adds inspection, enforcement and appeals procedures.

The Legislature approved a bill to continue the operations of the Department of Environmental Protection until July 2, 2002.

Only one major bill was lost by the DEP this session when a member of the House of Delegates blocked enactment of the Senate-passed measure. It was legislation to protect people living downstream from dangerous dams. The bill died in the House of Delegates.