

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

Form #3 □

Do Not Mark In This Box

RECEIVED

00 AUG 31 PM 2:11

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Division Environmental Protection-Office of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: WV Code §22-5-1 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: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526



West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

August 31, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

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

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of Agency Approval of a Proposed Rule."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my Office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: Karen Watson
Carrie Chambers

Questionnaire

DATE: August 31, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection
Office of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304
Phone: (304) 926-3647

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

1. Authorizing statute (s) citation: W. Va. Code §§ 22-5-1 et seq.
W. Va. Code §§22-18-1 et seq.

2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 12, 2000

 - b. What other notice, including advertising, did you give of the hearing?
 - I. Class I legal advertisement, *Charleston Daily Mail & Charleston Gazette*
 - II. Sent a copy of the Public Notice to our agency mailing list.
 - III. Public Notice placed on agency's Web site:
<http://www.dep.state.wv.us/oaq/>
 - IV. Press Release

 - c. Date of Public Hearing (s) or Public Comment Period ended:
Public Hearing -- August 14, 2000
Public Comment Period ended -- August 14, 2000

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (Be exact)

 August 31, 2000

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

<u>Edward L. Kropp, Chief</u>	<u>Carrie Chambers, Executive Assistant</u>
<u>7012 MacCorkle Ave., SE</u>	<u>10 McJunkin Road</u>
<u>Charleston, WV 25304</u>	<u>Nitro, WV 25143-2506</u>
<u>Phone: (304) 926-3647</u>	<u>(304) 759-0515</u>
<u>Fax: (304) 926-3637</u>	<u>(304) 759-0526</u>
<u>E-Mail: skropp@mail.dep.state.wv.us</u>	<u>Cchambers@mail.dep.state.wv.us</u>

- g. **IF DIFFERENT from item 'f',** please give Name, title, address and phone number (s) of agency person (s) who wrote and/or has responsibility for the contents of this rule: (Please type)

 See "f" above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

 N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**BUREAU OF ENVIRONMENT
DIVISION 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 U.S. Environmental Protection Agency promulgated standards for hazardous waste incinerators, cement kilns and light aggregate kilns on June 19, 1998. These standards were included in 45CSR25, previously filed and made effective July 1, 1999. The purpose of this rule revision is to incorporate by reference amendments to these standards which were finalized in 64 Federal Register 52828 (September 30, 1999), 64 Federal Register 63209 (November 19, 1999) and 65 Federal Register 42292 (July 10, 2000). These standards are promulgated under joint authority of the Clean Air Act (CAA) and the Resource Conservation and Recovery Act (RCRA). 40 CFR Part 63 Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors, adopted under the CAA, was previously included in 45CSR25, but the proposed rules will now place this authority in 45CSR34, the State's rule implementing the CAA and 40 CFR Part 63. The provisions of 40 CFR Parts 260, 261, 262, 264, 265, 266, and 270 of the RCRA rules, however, will continue to be incorporated by reference in 45CSR25. In addition, the proposed rule changes are required to maintain consistency with the Office 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 Director's recommendation, and with limited exception, the Office of Air Quality proposes that the rule incorporate by reference the federal counterparts.

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

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Director 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 July 6, 2000 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. See attached minutes of that meeting.

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 6, 2000, Director's Conference Room, Nitro

The twenty-first meeting of the DEP Advisory Council was held Thursday, July 6, 2000, in the Director's Second Floor Conference Room located in Nitro. Chairman Mike Castle called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Castle, Chairman
Lisa Dooley
Jacqueline Hallinan
Bill Raney
Rick Roberts
Bill Samples

Environmental Protection:

Greg Adolfson	Ava King
John Ailes	Brian Long
John Benedict	Pam Nixon
Al Blankenship	Rocky Parsons
Carrie Chambers	Jennifer Pauer
Dick Cooke	Cap Smith
Mike Dorsey	Randy Sovic
Andy Gallagher	Charlie Sturey
Randy Huffman	Darcy White
John Johnston	

1) Review and Approval of April 6, 2000 Minutes.

The April 6 Minutes were approved with note of two minor revisions.

2) Discussion of Proposed Rule Amendments - 2001 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's rule-making procedure policy that was implemented in 1998, and included involving DEP's Advisory Council in DEP's rule-making process as early as possible to enable the Council to

review, comment, and make recommendations to the Director on the proposed Legislative rules before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

John Benedict, Deputy Chief of the Office of Air Quality (OAQ), reviewed the following OAQ rules:

- 45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"
- 45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"
- 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"
- 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR part 60"
- 45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Authorities"
- 45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR30 - "Requirements for Operating Permits"
- 45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"

In discussion of 45CSR1, John explained to the Council that they did not have the companion rule (which is 45CSR26) to this proposed rule amendment, but Council will be provided a copy of the proposed rule when the draft is complete. Both rules have been drafted as a response to EPA's NO_x SIP Call. Failure of states to respond to the SIP Call will result in a NO_x federal implementation plan or federal program to reduce NO_x emissions under Section 126 of the CAA. John explained that OAQ is late in drafting both rules because they were waiting until several issues were settled in federal court. EPA is now requiring, and the federal courts concurred, that states develop rules and meet the conditions of the SIP Call by October 28, 2000. EPA's SIP Call affects major utility sources, cement kilns, and large

industrial-type boilers (those exceeding 250 lbs/mmBtu). The SIP Call originally included internal combustion engines.

45CSR1 establishes standards specifically for non-utility boilers, and follows EPA's model rule that states are to use in developing their SIPs. The model rule incorporates standards to allow sources to trade emissions between states. Therefore, states do not have a lot of flexibility to adjust their state-specific rules, if they want their sources to participate in a national NO_x budget-trading program.

John informed the Council that **45CSR15** adopts by reference the new federal provisions for emission standards for hazardous air pollutants (NESHAPS), and other regulatory requirements as outlined in 40 CFR Part 61, as of June 1, 2000. This also applies to **45CSR16**, which specifically includes associated reference methods, performance specifications, other test methods, and a minor correction to the reporting requirements for industrial-commercial-institutional steam generating units.

45CSR6 prevents and controls particulate matter air pollution from the combustion of refuse by the prohibition of open burning. This proposed rule also establishes weight and visible emission standards for incinerators and incineration, and is part of the West Virginia State Implementation Plan (SIP) approved by EPA. The rule does not prohibit bonfires, campfires, or other forms of open burning for the purposes of personal enjoyment and comfort, but establishes standards for open burning. The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under **45CSR13**.

45CSR23 - This rule was first promulgated approximately three years ago, and for the most part adopts new federal standards by reference. There is a specific plan that each state puts together for "existing sources" that OAQ has done for previous rule versions, and the plan for West Virginia has been approved by EPA.

45CSR25 - This rule establishes a program of air quality regulation over the treatment, storage, and disposal of hazardous wastes. John informed Council that this proposed rule amendment is incorporating additional federal requirements promulgated by EPA, as of June 1, 2000. There is a shift from the Resource Conservation and Recovery Act (RCRA) requirements into the Clean Air Act (CAA) programs that OAQ operates. Many of the RCRA provisions previously contained in this rule are now being

shifted to 45CSR34 (which will be discussed later in the meeting). John said this proposed rule amendment is also necessary to maintain consistency with the Office of Waste Management's current rule - 33CSR20.

45CSR26 (copy not provided for Council at this time) specifically addresses NO_x reduction requirements for electric generating units. This rule deviates somewhat from EPA's model rule, but follows the Governor's Coalition proposal. EPA's model rule requires electric generating units .15 lb/mmBtu NO_x limits, which is roughly an 85% reduction in NO_x emissions. Whereas, the Governor's coalition proposal requires .25 lb/mmBtu NO_x limits, or 65% reduction from their 1999 emissions.

45CSR30 establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act and 40 CFR Part 70. These proposed amendments will incorporate various corrections and revisions associated with the November 1995 Federal Register Notice. John said OAQ has deferred making these changes until now in anticipation of additional changes they believe EPA will make in Part 70. There also has not been a great deal of concern since OAQ has received interim approval of the program since 1994; however, EPA was recently sued for issuing these interim approvals. This put OAQ in the position of amending the rule to comply with the November 1995 requirements, so that OAQ can receive final approval from EPA. John said the rule may need to be modified again in the near future when (and if) EPA modifies the Part 70 requirements.

45CSR34 - This rule provides authority for the Director to determine and enforce case-by-case maximum achievable control technology (MACT) standards for major hazardous air pollutant sources, in the absence of a federal standard under certain circumstances, as required for permit program approval under Title V of the CAA. John said this proposed amendment does delete the requirement that OAQ do a case-by-case MACT analysis for sources that modify. He said this is a fairly significant change in the rule. Previously, and even under OAQ's Title V program, sources that do even slight modifications and were to eventually receive a MACT standard from EPA, were required to make some kind of guess as to what that standard was under such modification, and then do a case-by-case analysis to make that source comply with what everybody thought would be the ultimate MACT standard for that source. EPA was sued over this particular requirement, and has since removed the requirement from the Title V program. As mentioned earlier in the meeting, OAQ is also

proposing incorporating the provisions in 45CSR25, pertaining to hazardous waste combustors, into this rule.

After discussions and questions concerning OAQ's proposed rules, Council recommended the following to Chairman Castle:

Bill Raney deferred to Ray Joseph, representing the natural gas industry, for questions concerning Section 6 of 45CSR6 (To Prevent and Control Air Pollution From Combustion on Refuse) requirements for Permits before the installation and use of emergency flares. The concern from Mr. Joseph was that in certain situations emergency flares would exceed permitting trigger levels requiring a permit pursuant to 45CSR13. John Benedict concurred that permits would be required under those circumstances. However, that should not be that much of a burden since the emissions from a majority (90% +) of emergency flares used in the natural gas industry would be below permit trigger levels. It was noted that Section 6 was specifically revised to allow the use of emergency flares for the natural gas industry, and that others in OAQ were more directly involved in drafting the specific language in Section 6. Mr. Benedict recommended that proposed rule 45CSR6 go to public notice as drafted, and that the OAQ would meet with representatives of the natural gas industry to further discuss their concerns, and possibly consider revisions in Section 6.

Bill Raney asked if the Administrative Procedures Act requires Fiscal Notes to be completed as to the implications of the rule on the regulated community. Carrie Chambers advised Mr. Raney that fiscal notes are prepared for each rule before they are filed for public hearing, but the fiscal note requires information on the cost to the state in implementing the proposed rules, not on the regulated community. The Fiscal Notes are a work-in-progress, and will be submitted to Council after they are completed. Mr. Raney expressed his concern by stating that he has a problem in approving the proposed rules without the Council reviewing these documents beforehand. He said agencies have typically been known to crank out the standard responses to the fiscal notes, which leads to problems during the Legislative Rule-Making process. Bill Samples said he wasn't sure if the Council has a right to approve or disapprove the proposed rules, but only that the Director is to consult with Council on the proposed amendments, and then consider their comments. Mr. Raney stated that he would still like his concerns noted and included in the minutes that will be filed with the proposed rules.

Mr. Raney said he would also like to ask why there is nothing on the agenda concerning the Environmental Quality Board's (EQB) Water Quality Standards rule. Carrie Chambers explained that she has included a copy of EQB's rule (and also three of the Solid Waste Management Board's proposed rules), for Council's review, in the notebooks containing DEP's rules. She went on to explain that since the Boards have their own rule-making authority under §22B-3-4, they are not required to go before the Advisory Council during the rule-making process.

Mr. Raney said that DEP has a huge obligation in regards to water quality standards, regardless of who has the rule-making authority. He also said that the rules as proposed are huge, and the implications to the regulated community are immense.

Chairman Castle said he would try to find someone from OWR or EQB to discuss EQB's rule later in the meeting.

- 60CSR4 - "Awarding of West Virginia Stream Partners' Program Grant Rule."

Jennifer Pauer, Program Coordinator for the Stream Partners' Program, briefed Council members on the proposed amendments to 60CSR4. Jennifer said this rule was filed as an emergency rule in March. After one year of implementing the rule, it was discovered that the rigid spending caps contained in the original rule made it difficult to implement as intended by §20-13-4. The proposed amendments will loosen these spending caps, and therefore make it easier for grant recipients to complete their watershed improvement projects. The rule also contains minor technical cleanup.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 60CSR4.

- 199CSR1 - "Surface Mining Blasting Rule"

Darcy White, Office of Explosives and Blasting (OEB), briefed Council on 199CSR1. Darcy explained that many of the proposed amendments to the Surface Mining Blasting rule are technical cleanup in nature and also involve changing the order of some provisions to improve clarity. Sections covering inspections and enforcement and appeals were extracted from portions of existing 38CSR2, the Surface Mining and Reclamation rule. These sections are being amended into the current rule to

ensure OEB has authority to enforce a program that will satisfy OSM requirements. Another section extracted from 38CSR2 deals with pre-blast survey requirements, and is necessary if OEB is to gain OSM approval of the proposed rules. Darcy said that subsection 3.11 also contains a proposed revision that allows the Director to further restrict blasting on a case-by-case basis as an alternative to prohibiting blasting altogether. To correspond with the blaster's certification rules approved by OSM, and to help improve certified blaster's professionalism and knowledge, the requirements for blaster's certification is also being proposed as an amendment to this rule.

Larry Harris, Advisory Council member, was unable to attend the meeting; however, he expressed the following comments on 199CSR1 by e-mail. He asked whether these blasting rules will also apply to the quarry bill and rules. He said that in the Surface Mining Blasting rule there seems to be some consideration of the premining groundwater/wells. This presumes that any taking of this water right from nearby landowners is cause for a claim. Is this also true for limestone quarries?

Darcy responded by saying that no, 199CSR1 applies only to coal mining. Blasting requirements for quarries are addressed in §22-4 (revised during the past legislative session, and effective this July). Rocky Parsons is currently working on a rules package as required by this legislation. Until those are promulgated, there is no change in blasting requirements for quarries.

After discussion and questions from the Council, there were no recommendations made to the Director concerning the proposed amendments to 199CSR1.

John Johnston, Chief of the Office of Oil and Gas, discussed the following proposed rules.

- 35CSR4 - "Oil and Gas Wells and Other Wells"
- 35CSR7 - "Certification of Gas Wells"

John told Council that there are three proposed amendments to 35CSR4 and one to 35CSR7 that are both fairly straightforward. He said the proposed amendments in 35CSR4 will: 1) allow the plats to be submitted electronically. This is the first step in relation to authorizing permitting electronically for oil and gas wells; 2) will apply to the procedure for well transfer. These proposed amendments will eliminate the pre-circular, and cut the

paperwork and mailing in half that the Office of Oil and Gas must perform in the transfer process. This will also allow the transfer of well responsibility to occur in a more timely manner; and 3) will waive the new certification for the reuse of plats when applying for plugging permits.

35CSR7 - The Federal Energy Regulatory Commission is proposing to reinstate certain regulations regarding well category determination under the Natural Gas Policy Act of 1978, Section 503. This section allows natural gas producers to obtain tax credits under Section 29 of the Internal Revenue Code. Section 503 first requires a determination by the local regulatory agency that a well is producing one of the types of gas eligible for the Section 29 tax credit. The promulgation of these proposed rules will enable the Office of Oil and Gas to review and conduct the first determination.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 35CSR4 and 35CSR7.

The following Office of Waste Management rules were discussed:

- 33CSR3 - "Yard Waste Management Rule"
- 33CSR5 - "Waste Tire Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"
- 33CSR32 - "Underground Storage Tank Insurance Fund"

Dick Cooke, Assistant Chief, Office Waste Management (OWM), briefed Council on 33CSR3. He said OWM has taken a policy statement, that with a change in the yard waste laws approximately two years ago, provided for the Director to provide for reasonable and necessary exceptions to the prohibition of yard waste in landfills. This provision was not incorporated into the rule as the Legislature intended at that time. This proposed amendment incorporates that exception into the rule, and will allow West Virginia residents to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available.

Dick Cooke explained to Council that SB 427 (the Tire Bill) mandated that emergency rules be promulgated under 33CSR5. The

proposed emergency rule, among other amendments, will allow the disposal of waste tires in solid waste landfills, but only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available. The proposed amendments also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

Mike Dorsey, Assistant Chief, OWM, next discussed 33CSR20. He explained the rule is being amended to adopt by federal reference the 1999 changes made to 40 CFR Parts 260 through 279. Those amendments include Hazardous Waste Management System: Modification of the Hazardous Waste Program, Hazardous Waste Lamps, and 180-day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry. These amendments are less stringent than federal regulations and are intended to assist the regulated community, and encourage recycling and waste minimization.

Mike said OWM has two rule amendments this year that deal with underground storage tanks. The first, 33CSR30, applies to a very small segment of the population. This rule, as well as federal EPA requirements, requires that all underground storage tanks (UST) have corrosion protection by December 22, 1998. Many UST systems were upgraded to meet the standards rather than new USTs being installed; however, the UST inspectors are finding that many of the systems were not installed correctly. Since the current rules do not specifically require certification of persons who install corrosion protection, the burden falls solely on the UST owners and/or operators to correct the system. This proposed amendment should prevent this from continuing in the future.

33CSR32, OWM's final proposed rule, deals with the Underground Storage Tank Insurance Fund. This rule requires that accrued interest on the UST Insurance Trust Fund Capitalization Fund remain in that fund. The UST Administrative Fund has been depleted, and the annual registration fee assessment no longer generates enough revenue to support the UST program. The expenditures from the UST Administrative Fund are used as the required match for the federal grant. Unless more revenue is deposited in the UST Administrative Fund, there will be insufficient funds to pay personnel and other operating costs. The proposed amendments to this rule will allow the transfer of the interest money and alleviate the need to increase the annual registration fees. Mike said this amendment has the full support of the UST Advisory Committee.

After discussion of OWM's proposed rules, the following amendment to 33CSR5 (the Waste Tire Disposal rule) was offered by Counsel:

Bill Samples said that section 3.1.a indicates that a permit is required for persons who generate waste tires, but he couldn't find a definition of "generator," and this could be confusing when trying to interpret the rule. Cap Smith, Chief of OWM, said that is a very good point, and it will certainly be taken into consideration during the public hearing/comment period timeframe.

The following Office of Mining and Reclamation rules were discussed:

□ 38CSR2 - "WV Surface Mining Reclamation Rule"

□ 38CSR3 - "Rules for Quarrying and Reclamation"

John Ailes, Assistant Chief, OMR, briefly described the proposed amendments to 38CSR2, and noted that most of the amendments deal with Office of Surface Mining program amendments.

After discussion/questions concerning 38CSR2, the following comments were made by Council:

In Section 14.15.f, OMR is proposing to tie contemporaneous reclamation to reclamation liability. The proposed amendment stated that the reclamation liability cannot exceed the bond posted for the site. Bill Raney stated his concern with limiting the area to be disturbed based upon liability. He questioned who would be determining reclamation liability, and how. He said that he understands the reasoning, but would like to go on record as being "cautiously reserved," and additional comments would be forthcoming during the public hearing/comment period.

The proposed amendment to strike Section 23, which deals with coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use, was questioned by Council. John explained to Council that this provision was amended into the rule a few years ago, but never approved by OSM, and therefore deleted from the rule mainly as a cleanup. Bill Raney said that he is hesitant to see the Section deleted from the rule since it is still in DEP's statute, and has been beneficial to businesses several times throughout the state. After further discussion, Chairman Castle agreed to reinstate Section 23 and will work with OSM to seek program approval.

Rocky Parsons, OMR Assistant Chief, discussed the newly-proposed Quarry mining rules, 38CSR3, authorized in HB 4055, effective June 8. He said that the Statue was developed through the stakeholders' process, and the rules have been drafted the same way. DEP intends to file the rules as "Emergency," and at the same time file the rules to go through the normal legislative rule-making process. He said it is still a working document, but any changes made will be as a result of the stakeholders' process.

After discussion/questions on 38CSR3, the following comments are noted by Council members:

Mr. Larry Harris commented by e-mail on 38CSR3. He stated that his concerns for quarries are "related to degradation of nearby streams and water tables. Where limestone is located the quality of streams is generally high, often being trout streams. Quarries can alter the quality of the stream through siltation, and the quantity through alterations of the water table due to blasting. Hence, we want to make sure that the rules adequately address these two issues. I think that the water quality baseline studies should include a bottom fines analysis of receiving streams. Duffield of the Forest Service has established a direct relationship between the % of fines in stream sediment and the biological productivity of the stream. Having a baseline value for the receiving stream, and requiring monitoring to assure that this figure is not increased to the point where productivity is altered, would be a suitable protection for the stream - Part of 3.5 of the proposed rules."

Mr. Harris also noted his objection to calling streams "Natural Drainways" in subsection 2.17 of the definitions - He stated that "this nomenclature lowers the status of streams to drains, which are essentially industrial conduits or pipes. Very often these streams are manipulated in a way that destroys habitat and degrades the productivity of that stream."

Rocky responded that he will take these comments to the next stakeholders' meeting for their consideration, including a possible rewrite of 2.17.

Mr. Harris also asked if there are any preblast assessments or surveys of the groundwater level. Rocky responded by saying that preblast surveys do require a sampling of the water wells. With quarries, operations in existence now have a year to do a preblast survey to the nearest protected structure within 1,000

feet of the blasting area. A new permit has to do a preblast survey for any structure within 1,500 feet of the blasting area, as opposed to 1/2 mile with coal.

Bill Samples pointed out section 7.4.b., that deals with sediment control, seems to be awkwardly worded. As it is worded, the Director has to make a very definitive determination on something that the applicant only has to have a reasonable likelihood of. Chairman Castle agreed with this comment, and the rule will be amended accordingly.

Mr. Samples also noted in 7.4.c., that normally in an environmental regulation when something has to be removed, you say it has to be disposed of in an appropriate manner. Chairman Castle agreed with this comment and amendment to this section.

3. Open Discussion.

Chairman Castle introduced Libby Chatfield, Technical Advisor for the Environmental Quality Board. Chairman Castle thanked Libby for taking the time to appear before Council to discuss 46CSR1, EQB's Water Quality Standard Rule. Randy Sovic, DEP's Office Water Resources, also participated in the discussion.

After discussions/questions concerning the proposed EQB rule, the following comments are noted from Council members:

Bill Raney said that even though the Boards (the Environmental Quality Board and Solid Waste Management Board) are not required to come before the Council with their proposed Legislative rules, he would like to go on record as being "absolutely in opposition" to the proposed Groundwater Quality Standards' rule amendments until a full-blown, socio-economic impact statement is done. He said he does take exception to the fact that the Board can autonomously go forward with the rules without coming to the Advisory Council, and that he believes the obligations and costs will be enormous, both to the state and to industry.

Lisa Dooley stated that she is in complete agreement with Mr. Raney, and would also like to go on record as being opposed to EQB's proposed rule. She said that the proposed rule amendments, especially as they relate to the economic development part, very much concern her. She believes any economic development in West Virginia will be subject to the state's anti-degradation policy. And that policy should be reviewed and compared to surrounding states so that it is not detrimental for businesses and municipalities.

Bill Samples said that there is a multitude of concerns with this rule amendment, and that industry certainly has a major concern with it. He said that other states with anti-degradation rules may not have brought things to a stop, but certainly delayed them. He said that he would also like to go on record as being opposed to this rule amendment.

Rick Roberts asked to be included, for the record, his opposition to the proposed rule.

Director Castle said that the connection and link to DEP with regard to implementing the proposed EQB rules will definitely be taken into consideration.

Before adjournment of the meeting Bill Raney said he would like to go on record to thank Carrie Chambers for putting together the rules package and e-mailing them to Counsel in a timely fashion. Chairman Castle adjourned the meeting at 4:00 p.m.

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: X 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	There-after
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates: The above estimates reflect that there are no anticipated increases in costs to administer the revisions to this rule.

3. The U.S. Environmental Protection Agency promulgated standards for hazardous waste incinerators, cement kilns and light aggregate kilns on June 19, 1998. These standards were included in 45CSR25, previously filed and made effective July 1, 1999. The purpose of this rule revision is to incorporate by reference amendments to these standards which were finalized in 64 Federal Register 52828 (September 30, 1999), 64 Federal Register 63209 (November 19, 1999) and 65 Federal Register 42292 (July 10, 2000). These standards are promulgated under joint authority of the Clean Air Act (CAA) and the Resource Conservation and Recovery Act (RCRA). 40 CFR Part 63 Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors, adopted under the CAA, was previously included in 45CSR25, but the

Appendix B
Fiscal Note For Proposed Rules
Page Two

proposed rules will now place this authority in 45CSR34, the State's rule implementing the CAA and 40 CFR Part 63. The provisions of 40 CFR Parts 260, 261, 262, 264, 265, 266, and 270 of the RCRA rules, however, will continue to be incorporated by reference in 45CSR25. In addition, the proposed rule changes are required to maintain consistency with the Office 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.

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:

July 12, 2000

Signature of Agency Head or Authorized Representative

Larry J. Chambers

45CSR25

RECEIVED

TITLE 45

00 AUG 31 PM 2: 12

LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

OFFICE OF 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 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. -- ~~May 26, 2000.~~

1.4. Effective Date. -- ~~July 1, 2000.~~

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, 1998~~9~~.

1.5.b. This rule also incorporates by reference the provisions contained in 33 CSR 20, effective July 1, ~~1999~~2000.

1.5.c. This rule also incorporates by reference the provisions of 40 CFR Parts 260, 261, 262, 264, and 265, 266, and 270 as amended and finalized in 64 Federal Register ~~3382 (January 21, 1999)~~ 52828 (September 30, 1999) and 64 Federal Register 63209 (November 19, 1999).

§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, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such facility through application of production processes or available methods, systems, or techniques. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and

shall provide for compliance by means which achieve equivalent results.

- 2.5.** "CAA" means the federal Clean Air Act, as amended; 42 U.S.C. §7401 et seq.
- 2.6.** "CFR" means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.
- 2.7.** "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" means the Director of the West Virginia Division of Environmental Protection or such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.
- 2.9.** "Division of Environmental Protection" or "DEP" means that Division of the West Virginia Division of Environmental Protection which is created by the provisions of W. Va. Code §§22-1-1 et seq.
- 2.10.** "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 as 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, ~~1999~~2000 are hereby adopted by reference.

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 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, 1998~~9~~, 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" is used, the term means the Director of the West Virginia Division of Environmental Protection.

3.2.c. Whenever the term "Environmental Protection Agency" is used the term also means the West Virginia Division 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 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 may, on a case-by-case basis, establish performance standards for hazardous waste incinerators for control of emissions of metals, hydrogen halides, and elemental halogen, based on a finding that such standards are necessary to limit the emission rates of these constituents to levels which do not pose an unacceptable risk to human health and environment. The Director may require the following data from the permit applicant:

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 finds an imminent and substantial danger to human health or the environment, the Director may issue a temporary permit to a facility to allow treatment, storage, or disposal of hazardous waste at a non-permitted facility, or hazardous waste not covered by the permit for a facility with an effective permit. This emergency permit:

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 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, 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 shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director 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.

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 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 shall provide public notice as required in this section 5.2. when a Part B permit application has been submitted. The Director 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 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. 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 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 may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director 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 determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director 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 to fulfill the purposes for which the repository is established. The Director 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 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 shall specify a more appropriate site.

5.3.e. The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director 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. The Director 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 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 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 shall review every application for completeness. Each application submitted by a new hazardous waste management facility, should be reviewed for completeness by the Director 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 shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director 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 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 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 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 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'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 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 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 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 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 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 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 shall tentatively decide whether to prepare a draft permit or to deny the application.

5.6.b. If the Director 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'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 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 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 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 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 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 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 may update the mailing lists from time to time by requesting written indications of continued interest from those listed. The Director 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 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 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 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 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 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 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 shall issue a final permit decision. The Director 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 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 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's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the Director 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 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.

§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 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 of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method and rule.

45CSR25

TABLE 25-A

<u>Item No.</u>	<u>CFR No.</u>	<u>Part No.</u>	<u>Subpart No.</u>	<u>Title</u>
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)		
		- 270.72(b)(8)	G	- Changes During Interim Status
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	
		265	Appendix	- Appendix VI

<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)	- B	- Part B application General Requirements
		- 270.1(c)(viii)(C)	- A	- General Information
19.	40 CFR	- 270.30(m)	- B	- Information repository
20.	40 CFR	- 261.6(c)(1)	- A	- Requirements for Recyclable Materials
		261.4	-	- Exclusion
		261.38	-	- 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
25.	40 CFR	-	63.1211	-	EEE	Notification Requirements
		-	63.1212	-	-	Progress Reports
		-	63.1213	-	-	Certification
		-	63.1214	-	-	Extension of the Compliance Date
		-	63.1215	-	-	Sources that become affected sources after the effective date of this subpart
		-	63.1216	-	-	Extension of compliance date to install pollution prevention or waste minimization controls

result of a failure in the CEMS and allowed in the source's quality assurance plan at the time of the CMS failure. One-minute averages must not be rounded, smoothed, or disregarded.

6.5.2 Ten Minute Rolling Average Equation. The ten minute rolling average must be calculated using the following equation:

$$C_{RA} = \sum_{i=1}^{10} \frac{\bar{c}_i}{10}$$

Where:

C_{RA} = The concentration of the standard, expressed as a rolling average

\bar{c}_i = a one minute average

6.5.3 Hourly Rolling Average Equation for CO and THC CEMS and Operating Parameter Limits. The rolling average, based on a specific number integer of hours, must be calculated using the following equation:

$$C_{RA} = \sum_{i=1}^{60} \frac{\bar{c}_i}{60}$$

Where:

C_{RA} = The concentration of the standard, expressed as a rolling average

\bar{c}_i = a one minute average

6.5.4 Averaging Periods for CEMS other than CO and THC. The averaging period for CEMS other than CO and THC CEMS must be calculated as a rolling average of all one-hour values over the averaging period. An hourly average is comprised of 4 measurements taken at equally spaced time intervals, or at most every 15 minutes. Fewer than 4 measurements might be available within an hour for reasons such as facility downtime or CEMS calibration. If at least two measurements (30 minutes of data) are available, an hourly average must be calculated. The *n*-hour rolling average is calculated by averaging the *n* most recent hourly averages.

6.6 Units of the Standards for the Purposes of Recording and Reporting Emissions. Emissions must be recorded and reported expressed after correcting for oxygen, temperature, and moisture. Emissions must be reported in metric, but may also be reported in the English system of units, at 7 percent oxygen, 20°C, and on a dry basis.

6.7 Rounding and Significant Figures. Emissions must be rounded to two significant figures using ASTM procedure E-29-90 or its successor. Rounding must be avoided prior to rounding for the reported value.

7. Bibliography

1. 40 CFR Part 60, Appendix F, "Quality Assurance Procedures: Procedure I. Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used For Compliance Determination".

Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

3. Section 63.1350 is amended by revising paragraph (k) to read as follows:

§ 63.1350 Monitoring requirements.

(k) The owner or operator of an affected source subject to a particulate matter standard under § 63.1343 shall install, calibrate, maintain, and operate a particulate matter continuous emission monitoring system (PM CEMS) to measure the particulate matter discharged to the atmosphere. All requirements relating to installation, calibration, maintenance, operation or performance of the PM CEMS and implementation of the PM CEMS requirement are deferred pending further rulemaking.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.10 is amended by adding definitions in alphabetical order to read as follows:

§ 260.10 Definitions.

* * * * *
Dioxins and furans (D/F) means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.
 * * * * *

TEQ means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.
 * * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.38 is amended by revising Table 1 to read as follows:

§ 261.38 Comparable/Syngas Fuel Exclusion.

* * * * *

TABLE 1 TO § 261.38.—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION

Chemical name	CAS No.	Com- posite value (mg/kg)	Heating value (BTU/lb)	Con- centration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Total Nitrogen as N	NA	9000	18400	4900	.....
Total Halogens as Cl	NA	1000	18400	540	.....
Total Organic Halogens as Cl	NA	.....	.....	(¹)	.....
Polychlorinated biphenyls, total [Aroclors, total]	1338-36-3	ND	.....	ND	1.4
Cyanide, total	57-12-5	ND	.....	ND	1.0
Metals:					
Antimony, total	7440-36-012	ND	.....	0.23	.....
Arsenic, total	7440-38-2	ND	.....	0.23	.....
Barium, total	7440-39-3	ND	.....	23	.....
Beryllium, total	7440-41-7	ND	.....	1.2	.....
Cadmium, total	7440-43-9	.....	ND	.....	1.2
Chromium, total	7440-47-3	ND	.....	2.3	.....
Cobalt	7440-48-4	ND	.....	4.6	.....
Lead, total	7439-92-1	57	18100	31	.....
Manganese	7439-96-5	ND	.....	1.2	.....
Mercury, total	7439-97-6	ND	.....	0.25	.....
Nickel, total	7440-02-0	106	18400	58	.....
Selenium, total	7782-49-2	ND	.....	0.23	.....

TABLE 1 TO § 261.38.—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Com- posite value (mg/kg)	Heating value (BTU/lb)	Con- centration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Silver, total	7440-22-4	ND	.....	2.3	.....
Thallium, total	7440-28-0	ND	.....	23	.....
Hydrocarbons:					
Benzo[a]anthracene	56-55-3	ND	.....	2400	.....
Benzene	71-43-2	8000	19600	4100	.....
Benzo[b]fluoranthene	205-99-2	ND	.....	2400	.....
Benzo[k]fluoranthene	207-08-9	ND	.....	2400	.....
Benzo[a]pyrene	50-32-8	ND	.....	2400	.....
Chrysene	218-01-9	ND	.....	2400	.....
Dibenzo[a,h]anthracene	53-70-3	ND	.....	2400	.....
7,12-Dimethylbenz[a]anthracene	57-97-6	ND	.....	2400	.....
Fluoranthene	206-44-0	ND	.....	2400	.....
Indeno(1,2,3-cd)pyrene	193-39-5	ND	.....	2400	.....
3-Methylcholanthrene	56-49-5	ND	.....	2400	.....
Naphthalene	91-20-3	6200	19400	3200	.....
Toluene	108-88-3	69000	19400	36000	.....
Oxygenates:					
Acetophenone	98-86-2	ND	.....	2400	.....
Acrolein	107-02-8	ND	.....	39	.....
Allyl alcohol	107-18-6	ND	.....	30	.....
Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate]	117-81-7	ND	.....	2400	.....
Butyl benzyl phthalate	85-68-7	ND	.....	2400	.....
o-Cresol [2-Methyl phenol]	95-48-7	ND	.....	2400	.....
m-Cresol [3-Methyl phenol]	108-39-4	ND	.....	2400	.....
p-Cresol [4-Methyl phenol]	106-44-5	ND	.....	2400	.....
Di-n-butyl phthalate	84-74-2	ND	.....	2400	.....
Diethyl phthalate	84-66-2	ND	.....	2400	.....
2,4-Dimethylphenol	105-67-9	ND	.....	2400	.....
Dimethyl phthalate	131-11-3	ND	.....	2400	.....
Di-n-octyl phthalate	117-84-0	ND	.....	2400	.....
Endothall	145-73-3	ND	.....	100	.....
Ethyl methacrylate	97-63-2	ND	.....	39	.....
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110-80-5	ND	.....	100	.....
Isobutyl alcohol	78-83-1	ND	.....	39	.....
Isosafrole	120-58-1	ND	.....	2400	.....
Methyl ethyl ketone [2-Butanone]	78-93-3	ND	.....	39	.....
Methyl methacrylate	80-62-6	ND	.....	39	.....
1,4-Naphthoquinone	130-15-4	ND	.....	2400	.....
Phenol	108-95-2	ND	.....	2400	.....
Propargyl alcohol [2-Propyn-1-ol]	107-19-7	ND	.....	30	.....
Safrole	94-59-7	ND	.....	2400	.....
Sulfonated Organics:					
Carbon disulfide	75-15-0	ND	.....	ND	39
Disulfoton	298-04-4	ND	.....	ND	2400
Ethyl methanesulfonate	62-50-0	ND	.....	ND	2400
Methyl methanesulfonate	66-27-3	ND	.....	ND	2400
Phorate	298-02-2	ND	.....	ND	2400
1,3-Propane sultone	1120-71-4	ND	.....	ND	100

TABLE 1 TO § 261.38.—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Com- posite value (mg/kg)	Heating value (BTU/lb)	Con- centration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Tetraethylthiopyrophosphate [Sulfotepp]	3689-24-5	ND	.....	ND	2400
Thiophenol [Benzenethiol]	108-98-5	ND	.....	ND	30
O,O,O-Triethyl phosphorothioate	126-68-1	ND	.....	ND	2400
Nitrogenated Organics:					
Acetonitrile [Methyl cyanide]	75-05-8	ND	.....	ND	39
2-Acetylaminofluorene [2-AAF]	53-96-3	ND	.....	ND	2400
Acrylonitrile	107-13-1	ND	.....	ND	39
4-Aminobiphenyl	92-67-1	ND	.....	ND	2400
4-Aminopyridine	504-24-5	ND	.....	ND	100
Aniline	62-53-3	ND	.....	ND	2400
Benzidine	92-87-5	ND	.....	ND	2400
Dibenz[a,j]acridine	224-42-0	ND	.....	ND	2400
O,O-Diethyl O-pyrazinyl phosphorothioate [Thionazin]	297-97-2	ND	.....	ND	2400
Dimethoate	60-51-5	ND	.....	ND	2400
p-(Dimethylamino) azobenzene [4-Dime thylaminoazobenzene]	60-11-7	ND	.....	ND	2400
3,3'-Dimethylbenzidine	119-93-7	ND	.....	ND	2400
α,α-Dimethylphenethylamine	122-09-8	ND	.....	ND	2400
3,3'-Dimethoxybenzidine	119-90-4	ND	.....	ND	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99-65-0	ND	.....	ND	2400
4,6-Dinitro-o-cresol	534-52-1	ND	.....	ND	2400
2,4-Dinitrophenol	51-28-5	ND	.....	ND	2400
2,4-Dinitrotoluene	121-14-2	ND	.....	ND	2400
2,6-Dinitrotoluene	606-20-2	ND	.....	ND	2400
Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88-85-7	ND	.....	ND	2400
Diphenylamine	122-39-4	ND	.....	ND	2400
Ethyl carbamate [Urethane]	51-79-6	ND	.....	ND	100
Ethylenethiourea (2-Imidazolidinethione)	96-45-7	ND	.....	ND	110
Famphur	52-85-7	ND	.....	ND	2400
Methacrylonitrile	126-98-7	ND	.....	ND	39
Methapyrilene	91-80-5	ND	.....	ND	2400
Minomyl	16752-77-5	ND	.....	ND	57
2-Methylactonitrile, [Acetone cyanohydrin]	75-86-5	ND	.....	ND	100
Methyl parathion	298-00-0	ND	.....	ND	2400
MNNG (N-Methyl-N-nitroso-N'-nitroguanidine)	70-25-7	ND	.....	ND	110
1-Naphthylamine, [α-Naphthylamine]	134-32-7	ND	.....	ND	2400
2-Naphthylamine, [β-Naphthylamine]	91-59-8	ND	.....	ND	2400
Nicotine	54-11-5	ND	.....	ND	100
4-Nitroaniline, [p-Nitroaniline]	100-01-6	ND	.....	ND	2400
Nitrobenzene	98-95-3	ND	.....	ND	2400
p-Nitrophenol, [p-Nitrophenol]	100-02-7	ND	.....	ND	2400
5-Nitrotoluidine	99-55-8	ND	.....	ND	2400
N-Nitrosodi-n-butylamine	924-16-3	ND	.....	ND	2400
N-Nitrosodiethylamine	55-18-5	ND	.....	ND	2400
N-Nitrosodiphenylamine, [Diphenylnitrosamine]	86-30-6	ND	.....	ND	2400
N-Nitroso-N-methylethylamine	10595-95-6	ND	.....	ND	2400
N-Nitrosomorpholine	59-89-2	ND	.....	ND	2400
N-Nitrosopiperidine	100-75-4	ND	.....	ND	2400
N-Nitrosopyrrolidine	930-55-2	ND	.....	ND	2400
2-Nitropropane	79-46-9	ND	.....	ND	30
Parathion	56-38-2	ND	.....	ND	2400
Phenacetin	62-44-2	ND	.....	ND	2400
1,4-Phenylene diamine, [p-Phenylenediamine]	106-50-3	ND	.....	ND	2400
N-Phenylthiourea	103-85-5	ND	.....	ND	57
2-Picoline [alpha-Picoline]	109-06-8	ND	.....	ND	2400
Propylthiouracil, [6-Propyl-2-thiouracil]	51-52-5	ND	.....	ND	100
Pyridine	110-86-1	ND	.....	ND	2400

TABLE 1 TO § 261.38.—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Com- posite value (mg/kg)	Heating value (BTU/lb)	Con- centration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Strychnine	57-24-9	ND	.....	ND	100
Thioacetamide	62-55-5	ND	.....	ND	57
Thiofanox	39196-18-4	ND	.....	ND	100
Thiourea	62-56-6	ND	.....	ND	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95-80-7	ND	.....	ND	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823-40-5	ND	.....	ND	57
o-Toluidine	95-53-4	ND	.....	ND	2400
p-Toluidine	106-49-0	ND	.....	ND	100
1,3,5-Trinitrobenzene, [sym-Trinitrobenzene]	99-35-4	ND	.....	ND	2400
Halogenated Organic:					
Allyl chloride	107-05-1	ND	.....	ND	39
Aramite	140-57-8	ND	.....	ND	2400
Benzal chloride [Dichloromethyl benzene]	98-87-3	ND	.....	ND	100
Benzyl chloride	100-44-77	ND	.....	ND	100
bis(2-Chloroethyl)ether [Dichoroethyl ether]	111-44-4	ND	.....	ND	2400
Bromoform [Tribromomethane]	75-25-2	ND	.....	ND	39
Bromomethane [Methyl bromide]	74-83-9	ND	.....	ND	39
4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101-55-3	ND	.....	ND	2400
Carbon tetrachloride	56-23-5	ND	.....	ND	39
Chlordane	57-74-9	ND	.....	ND	14
p-Chloroaniline	106-47-8	ND	.....	ND	2400
Chlorobenzene	108-90-7	ND	.....	ND	39
Chlorobenzilate	510-15-6	ND	.....	ND	2400
p-Chloro-m-cresol	59-50-7	ND	.....	ND	2400
2-Chloroethyl vinyl ether	110-75-8	ND	.....	ND	39
Chloroform	67-66-3	ND	.....	ND	39
Chloromethane [Methyl chloride]	74-87-3	ND	.....	ND	39
2-Chloronaphthalene [beta-Chloronaphthalene]	91-58-7	ND	.....	ND	2400
2-Chlorophenol [o-Chlorophenol]	95-57-8	ND	.....	ND	2400
Chloroprene [2-Chloro-1,3-butadiene]	1126-99-8	ND	.....	ND	39
2,4-D [2,4-Dichlorophenoxyacetic acid]	94-75-7	ND	.....	ND	7.0
Diallate	2303-16-4	ND	.....	ND	2400
1,2-Dibromo-3-chloropropane	96-12-8	ND	.....	ND	39
1,2-Dichlorobenzene [o-Dichlorobenzene]	95-50-1	ND	.....	ND	2400
1,3-Dichlorobenzene [m-Dichlorobenzene]	541-73-1	ND	.....	ND	2400
1,4-Dichlorobenzene [p-Dichlorobenzene]	106-46-7	ND	.....	ND	2400
3,3'-Dichlorobenzidine	91-94-1	ND	.....	ND	2400
Dichlorodifluoromethane [CFC-12]	75-71-8	ND	.....	ND	39
1,2-Dichloroethane [Ethylene dichloride]	107-06-2	ND	.....	ND	39
1,1-Dichloroethylene [Vinylidene chloride]	75-35-4	ND	.....	ND	39
Dichloromethoxy ethane [Bis(2-chloroethoxy)methane]	111-91-1	ND	.....	ND	2400
2,4-Dichlorophenol	120-83-2	ND	.....	ND	2400
2,6-Dichlorophenol	87-65-0	ND	.....	ND	2400
1,2-Dichloropropane [Propylene dichloride]	78-87-5	ND	.....	ND	39
cis-1,3-Dichloropropylene	10061-01-5	ND	.....	ND	39
trans-1,3-Dichloropropylene	10061-02-6	ND	.....	ND	39
1,3-Dichloro-2-propanol	96-23-1	ND	.....	ND	30
Endosulfan I	959-98-8	ND	.....	ND	1.4
Endosulfan II	33213-65-9	ND	.....	ND	1.4
Endrin	72-20-8	ND	.....	ND	1.4

TABLE 1 TO § 261.38.—DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Com- posite value (mg/kg)	Heating value (BTU/lb)	Con- centration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Endrin aldehyde	7421-93-4	ND	.....	ND	1.4
Endrin Ketone	53494-70-5	ND	.....	ND	1.4
Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106-89-8	ND	.....	ND	30
Ethylidene dichloride [1,1-Dichloroethane]	75-34-3	ND	.....	ND	39
2-Fluoroacetamide	640-19-7	ND	.....	ND	100
Heptachlor	76-44-8	ND	.....	ND	1.4
Heptachlor epoxide	1024-57-3	ND	.....	ND	2.8
Hexachlorobenzene	118-74-1	ND	.....	ND	2400
Hexachloro-1,3-butadiene [Hexachlorobutadiene]	87-68-3	ND	.....	ND	2400
Hexachlorocyclopentadiene	77-47-4	ND	.....	ND	2400
Hexachloroethane	67-72-1	ND	.....	ND	2400
Hexachlorophene	70-30-4	ND	.....	ND	59000
Hexachloropropene [Hexachloropropylene]	1888-71-7	ND	.....	ND	2400
Isodrin	465-73-6	ND	.....	ND	2400
Kepone [Chlordecone]	143-50-0	ND	.....	ND	4700
Lindane [gamma-BHC] [gamma-Hexachlorocyclohexane]	58-89-9	ND	.....	ND	1.4
Methylene chloride [Dichloromethane]	75-09-2	ND	.....	ND	39
4,4'-Methylene-bis(2-chloroaniline)	101-14-4	ND	.....	ND	100
Methyl iodide [Iodomethane]	74-88-4	ND	.....	ND	39
Pentachlorobenzene	608-93-5	ND	.....	ND	2400
Pentachloroethane	76-01-7	ND	.....	ND	39
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozene]	82-68-8	ND	.....	ND	2400
Pentachlorophenol	87-86-5	ND	.....	ND	2400
Pronamide	23950-58-5	ND	.....	ND	2400
Silvex [2,4,5-Trichlorophenoxypropionic acid]	93-72-1	ND	.....	ND	7.0
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]	1746-01-6	ND	.....	ND	30
1,2,4,5-Tetrachlorobenzene	95-94-3	ND	.....	ND	2400
1,1,2,2-Tetrachloroethane	79-34-5	ND	.....	ND	39
Tetrachloroethylene [Perchloroethylene]	127-18-4	ND	.....	ND	39
2,3,4,6-Tetrachlorophenol	58-90-2	ND	.....	ND	2400
1,2,4-Trichlorobenzene	120-82-1	ND	.....	ND	2400
1,1,1-Trichloroethane [Methyl chloroform]	71-55-6	ND	.....	ND	39
1,1,2-Trichloroethane [Vinyl trichloride]	79-00-5	ND	.....	ND	39
Trichloroethylene	79-01-6	ND	.....	ND	39
Trichlorofluoromethane [Trichloromonofluoromethane]	75-69-4	ND	.....	ND	39
2,4,5-Trichlorophenol	95-95-4	ND	.....	ND	2400
2,4,6-Trichlorophenol	88-06-2	ND	.....	ND	2400
1,2,3-Trichloropropane	96-18-4	ND	.....	ND	39
Vinyl Chloride	75-01-4	ND	.....	ND	39

Notes:
 NA—Not Applicable.
 ND—Nondetect.
 1 25 or individual halogenated organics listed below.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.340 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, and adding paragraph (b), to read as follows:

§ 264.340 Applicability.

* * * * *

(b) *Integration of the MACT standards.* (1) Except as provided by paragraph (b)(2) of this section, the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of subpart EEE of part 63 of this Chapter. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit

conditions that were based on the standards of this part will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

(2) The MACT standards do not replace the closure requirements of § 264.351 or the applicable requirements of subparts A through H, BB and CC of this part.

* * * * *

3. Section 264.601 is amended by revising the introductory text to read as follows:

§ 264.601 Environmental performance standards.

A miscellaneous unit must be located, designed, constructed, operated,

maintained, and closed in a manner that will ensure protection of human health and the environment. Permits for miscellaneous units are to contain such terms and provisions as necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of hazardous waste or hazardous constituents from the unit. Permit terms and provisions must include those requirements of subparts I through O and subparts AA through CC of this part, part 270, part 63, subpart EEE, and part 146 of this chapter that are appropriate for the miscellaneous unit being permitted. Protection of human health and the environment includes, but is not limited to:

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937.

2. Section 265.340 is amended by redesignating paragraph (b) as paragraph (c), and adding paragraph (b), to read as follows:

§ 265.340 Applicability.

* * * * *

(b) *Integration of the MACT standards.* (1) Except as provided by paragraph (b)(2) of this section, the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE of this chapter.

(2) The following requirements continue to apply even where the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: § 265.351 (closure) and the applicable requirements of subparts A through H, BB and CC of this part.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002 (a), 3004, 6905, 6906, 6912, 6922, 6924, 6925, and 6937.

2. Section 266.100 is amended by redesignating paragraphs (b), (c), (d), (e), and (f) as paragraphs (c), (d), (e), (f), and (g), adding paragraph (b), revising introductory text to newly designated paragraph (d)(1), revising the introductory text to newly designated paragraph (d)(3), and adding paragraph (h), to read as follows:

§ 266.100 Applicability.

* * * * *

(b) *Integration of the MACT standards.* (1) Except as provided by paragraph (b)(2) of this section, the standards of this part no longer apply when an affected source demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of this part will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

(2) The following standards continue to apply:

- (i) The closure requirements of §§ 266.102(e)(11) and 266.103(l);
- (ii) The standards for direct transfer of § 266.111;
- (iii) The standards for regulation of residues of § 266.212; and
- (iv) The applicable requirements of subparts A through H, BB and CC of parts 264 and 265 of this chapter.

* * * * *

(d) * * *
 (1) To be exempt from §§ 266.102 through 266.111, an owner or operator of a metal recovery furnace or mercury recovery furnace must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts

emitted by steel manufacturing, must comply with the requirements of paragraph (d)(3) of this section, and owners or operators of lead recovery furnaces that are subject to regulation under the Secondary Lead Smelting NESHAP must comply with the requirements of paragraph (h) of this section.

* * * * *

(3) To be exempt from §§ 266.102 through 266.111, an owner or operator of a lead or nickel-chromium or mercury recovery furnace, except for owners or operators of lead recovery furnaces subject to regulation under the Secondary Lead Smelting NESHAP,

* * * * *

(h) Starting June 23, 1997, owners or operators of lead recovery furnaces that process hazardous waste for recovery of lead and that are subject to regulation under the Secondary Lead Smelting NESHAP, are conditionally exempt from regulation under this subpart, except for § 266.101. To be exempt, an owner or operator must provide a one-time notice to the Director identifying each hazardous waste burned and specifying that the owner or operator claims an exemption under this paragraph. The notice also must state that the waste burned has a total concentration of non-metal compounds listed in part 261, appendix VIII, of this chapter of less than 500 ppm by weight, as fired and as provided in paragraph (d)(2)(i) of this section, or is listed in appendix XI to this part 266.

3. Section 266.101 is amended by revising paragraph (c)(1) to read as follows:

§ 266.101 Management prior to burning.

* * * * *

(c) *Storage and treatment facilities.* (1) Owners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of parts 264, 265, and 270 of this chapter, except as provided by paragraph (c)(2) of this section. These standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner.

* * * * *

4. Section 266.105 is amended by redesignating paragraph (c) as paragraph (d) and adding paragraph (c), to read as follows:

§ 266.105 Standards to control particulate matter.

* * * * *

(c) Oxygen correction. (1) Measured pollutant levels must be corrected for the amount of oxygen in the stack gas according to the formula:

$$P_c = P_m \times 14 / (E - Y)$$

Where:

P_c is the corrected concentration of the pollutant in the stack gas, P_m is the measured concentration of the pollutant in the stack gas, E is the oxygen concentration on a dry basis in the combustion air fed to the device, and Y is the measured oxygen concentration on a dry basis in the stack.

(2) For devices that feed normal combustion air, E will equal 21 percent. For devices that feed oxygen-enriched air for combustion (that is, air with an oxygen concentration exceeding 21 percent), the value of E will be the concentration of oxygen in the enriched air.

(3) Compliance with all emission standards provided by this subpart must be based on correcting to 7 percent oxygen using this procedure.

5. Section 266.112, paragraph (b)(1) introductory text is amended by adding a sentence at the end and paragraph (b)(2)(i) is revised to read as follows:

§ 266.112 Regulation of residues.

(b) * * *

(1) * * * For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2,3,7,8-TCDD equivalent values using the procedure specified in section 4.0 of appendix IX of this part.

(2) * * *

(i) *Nonmetal constituents.* The concentration of each nonmetal toxic constituent of concern (specified in paragraph (b)(1) of this section) in the waste-derived residue must not exceed the health-based level specified in appendix VII of this part, or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher. If a health-based limit for a constituent of concern is not listed in appendix VII of this part, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures contained in SW-846, or other appropriate methods), whichever is higher, must be used. The levels specified in appendix VII of this part (and the default level of 0.002 micrograms per kilogram or the level of

detection for constituents as identified in Note 1 of appendix VII of this paragraph) are administratively stayed under the condition, for those constituents specified in paragraph (b)(1) of this section, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts as defined by applicable Agency guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by § 268.43 of this chapter for F039 nonwastewaters. In complying with the § 268.43 of this chapter F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorodibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans.

Note to this paragraph: The administrative stay, under the condition that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for F039 nonwastewaters, remains in effect until further administrative action is taken and notice is published in the *Federal Register* and the Code of Federal Regulations.

6. Appendix VIII to part 266 is revised to read as follows:

APPENDIX VIII TO PART 266.—ORGANIC COMPOUNDS FOR WHICH RESIDUES MUST BE ANALYZED

Volatiles	Semivolatiles
Benzene	Bis(2-ethylhexyl)phthalate
Toluene	Naphthalene
Carbon tetrachloride	Phenol
Chloroform	Diethyl phthalate
Methylene chloride	Butyl benzyl phthalate
Trichloroethylene	2,4-Dimethylphenol
Tetra chloroethylene	o-Dichlorobenzene
1,1,1-Trichloroethane	m-Dichlorobenzene
Chlorobenzene	p-Dichlorobenzene
cis-1,4-Dichloro-2-butene	Hexachlorobenzene
Bromochloromethane	2,4,6-Trichlorophenol
Bromodichloromethane	Fluoranthene
Bromoform	o-Nitrophenol

APPENDIX VIII TO PART 266.—ORGANIC COMPOUNDS FOR WHICH RESIDUES MUST BE ANALYZED—Continued

Volatiles	Semivolatiles
Bromomethane	1,2,4-Trichlorobenzene
Methylene bromide ...	o-Chlorophenol
Methyl ethyl ketone ...	Pentachlorophenol
	Pyrene
	Dimethyl phthalate
	Mononitrobenzene
	2,6-Toluene diisocyanate
	Polychlorinated dibenzo-p-dioxins ¹
	Polychlorinated dibenzo-furans ¹

¹ Analyses for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans are required only for residues collected from areas downstream of the combustion chamber (e.g., ductwork, boiler tubes, heat exchange surfaces, air pollution control devices, etc.).

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

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

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

2. Section 270.19 is amended by revising the introductory text and adding paragraph (e) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

Except as § 264.340 of this Chapter and § 270.19(e) provide otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of paragraphs (a), (b), or (c) of this section.

* * * * *

(e) When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE, of this chapter (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

3. Section 270.22 is amended by adding introductory text to read as follows:

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

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (i.e., by

conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of

information collection in accordance with §§ 270.10(k) and 270.32(b)(2).
* * * * *

4. Appendix I to § 270.42 is amended by adding an entry 8 in numerical order in section A and revising entry 9 in section L to read as follows:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
September 30, 1999	Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.	[Insert FR page numbers]. ...	September 30, 1999.

APPENDIX I TO § 270.42—CLASSIFICATION OF PERMIT MODIFICATION

Modification	Class
A. General Permit Provisions:	
8. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility).	11
L. Incinerators, Boilers, and Industrial Furnaces:	
9. Technology Changes Needed to meet Standards under 40 CFR part 63 (Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of § 270.42(j) are followed.	11

5. Section 270.62 is amended by adding introductory text to read as follows:

§ 270.62 Hazardous waste incinerator permits.

When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).
* * * * *

6. Section 270.66 is amended by adding introductory text to read as follows:

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

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in

40 CFR part 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).
* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the Federal Register, to read as follows:

§ 271.1 Purpose and scope.

* * * * *
(j) * * *

¹Class 1 modifications requiring prior Agency approval.

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
September 30, 1999	Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.	.....	Sept. 30, 1999.

estimated dates for these activities that will bring the source into compliance with emission control requirements of this subpart. The submission of key activities and dates is not intended to be static and you may revise them during the period the NIC is in effect. You must submit revisions to the Administrator and make them available to the public. You must include the following key activities and dates:

(A) The dates by which you will develop engineering designs for emission control systems or process changes for emissions;

(B) The date by which you will commit internal or external resources for installing emission control systems or making process changes for emission control, or the date by which you will issue orders for the purchase of component parts to accomplish emission control or process changes.

(iv) If you intend to comply, but will not stop burning hazardous waste by October 1, 2001 a certification that:

3. Section 63.1211 is amended by revising paragraph (b) to read as follows:

§ 63.1211 What are the recordkeeping and reporting requirements?

(b) *Compliance progress reports associated with the notification of intent to comply.* (1) *General.* If you intend to comply with the emission standards and operating requirements of this subpart, then not later than October 1, 2001, you must comply with the following, unless you comply with paragraph (b)(2)(ii) of this section:

(i) Develop engineering design for any physical modifications to the source needed to comply with the emission standards of this subpart;

(ii) Submit applicable construction applications to the Administrator; and

(iii) Document an internal or external commitment of resources, i.e. funds or personnel, to purchase, fabricate, and install any equipment, devices, and ancillary structures needed to comply with the emission standards and operating requirements of this subpart.

(2) *Progress Report.* (i) You must submit to the Administrator a progress report on or before October 1, 2001

which contains information documenting that you have met the requirements of paragraph (b)(1) of this section. This information will be used by the Administrator to determine if you have made adequate progress towards compliance with the emission standards of this subpart. In any evaluation of adequate progress, the Administrator may consider any delays in a source's progress caused by the time required to obtain necessary permits from governmental regulatory agencies when the sources have submitted timely and complete permit applications.

(ii) If you intend to comply with the emission standards and operating requirements of this subpart, but can do so without undertaking any of the activities described in paragraph (b)(1) of this section, you must submit a progress report documenting either:

(A) That you, at the time of the progress report, are in compliance with the emission standards and operating requirements; or

(B) The steps you will take to comply, without undertaking any of the activities listed in paragraphs (b)(1)(i) through (b)(1)(iii) of this section.

(iii) If you do not comply with paragraphs (b)(1) or (b)(2)(ii) of this section, you must stop burning hazardous waste on or before October 1, 2001.

(3) *Schedule.* (i) You must include in the progress report a detailed schedule that lists key dates for all projects that will bring the source into compliance with the emission standards and operating requirements of this subpart for the time period between submission of the progress report and the compliance date of the emission standards and operating requirements of this subpart.

(ii) The schedule must contain anticipated or actual dates for the following:

(A) Bid and award dates, as necessary, for construction contracts and equipment supply contractors;

(B) Milestones such as ground breaking, completion of drawings and specifications, equipment deliveries, intermediate construction completions, and testing;

(C) The dates on which applications will be submitted for operating permits or licenses;

(D) The dates by which approvals of any permits or licenses are anticipated; and

(E) The projected date by which you expect to comply with the emission standards and operating requirements of this subpart.

(4) *Notice of intent to comply.* You must include a statement in the progress report that you intend or do not intend to comply with the emission standards and operating requirements of this subpart.

(5) *Sources that do not intend to comply.* (i) If you indicated in your NIC your intent not to comply with the emission standards and operating requirements of this subpart and stop burning hazardous waste prior to submitting a progress report, or if you meet the requirements of § 63.1206(a)(2), you are exempt from the requirements of paragraphs (b)(1) through (b)(4) of this section. However, you must submit and include in a revised NIC the date on which you stopped burning hazardous waste and the date(s) you submitted, or plan to submit RCRA closure documents.

(ii) If you signify in the progress report, submitted not later than October 1, 2001, your intention not to comply with the emission standards and operating requirements of this subpart, you must stop burning hazardous waste on or before October 1, 2001 and you are exempt from the requirements of paragraphs (b)(1) through (b)(3) of this section.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation of part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

2. In § 261.38 Table 1 is amended by revising the entry for "Antimony, total" under the heading Metals to read as follows:

§ 261.38 Comparable/Syngas Fuel Exclusion.

TABLE 1 TO § 261.38 DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION

Chemical name	CAS No.	Composite value (mg/kg)	Heating value (BTU/lb)	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Metals:					
Antimony, total	7440-36-0	ND			12

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for Part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 6905, 6906, 6912, 6922, 6924, 6925, and 6937.

2. The Appendix VIII table to Part 266 is amended by adding the note after the table to read as follows:

Appendix VIII Table to Part 266—Organic Compounds for Which Residues Must Be Analyzed

Note to the table: Analysis is not required for those compounds that do not have an established F039 nonwastewater concentration limit.

[FR Doc. 99-30235 Filed 11-18-99; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[USCG-1999-6224]

RIN 2115-AF23

Licensing and Manning for Officers of Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard establishes requirements for licensing mariners who operate towing vessels, whether inspected or uninspected. This interim rule creates new licenses with levels of qualification and with enhanced training and operating experience, including practical demonstrations of skill; it also ensures that all towing vessels will be manned by officers holding licenses specifically authorizing their service. It should improve

navigational safety for towing vessels. Please note that the interim rule is identified by a new docket number, because the docket for this rulemaking has been transferred to the Department of Transportation docket which can be reviewed on the Internet. To comment on the interim rule, follow the procedures described in the ADDRESSES section.

DATES: This interim rule is effective November 20, 2000. Comments and related material must reach the Docket Management Facility on or before February 17, 2000. Comments sent to the Office of Management and Budget (OMB) on collection of information (OMB Control No. 2115-0623) must reach OMB on or before January 18, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-1999-6224), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By hand delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be

available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Lieutenant Commander Luke Harden, Office of Operating and Environmental Standards (C-MSO), 202-267-0229; e-mail LHarden@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG-1999-6224], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under ADDRESSES; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request

Division of Environmental Protection

Public Hearing: Rules 45CSR1, 45CSR6, 45CSR15, 45CSR16, 45CSR23, Time/Date: 8/14/2000 6:00 p
45CSR25, 45CSR30 and 45CSR34

NAME	ADDRESS	COMMENT	
		YES	NO
1. Tina Adams	Flexsys		X
2. Kim Brown Poland	Robinson + McElwee LLP	X	
3. WZ Appel	RODMAN & McEWEE LLP		X
4. Dave Young	Robinson & McElwee LLP		X
5. Kathy G. Beckett	Jackson + Kelly | WV Chamber		
6. [Signature]	Charleston Gazette		X
7. David M Flannery	Jackson + Kelly		X
8. Tim Mallett	AEP-WV		X
9. Lisa McClung	OAG		X
10. Karen Watson	//		X
11.			
12.			
13.			
14.			
15.			

ORIGINAL

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

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

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

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Air Quality, Conference Room, 7012 MacCorkle Avenue, S.E. Charleston, West Virginia, commencing at 6:03 p.m., on the 14th day of August 2000, pursuant to notice.

Missy L. Young, C.C.R.
Post Office Box 13221
Sissonville, WV 25360
(304) 984-2300 or 540-8179

P R O C E E D I N G S

MS. CHANDLER:

The purpose of this public hearing is to accept comments on 45CSR25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities".

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.

The U.S. Environmental Protection Agency promulgated standards for hazardous waste incinerators, cement kilns and light aggregate kilns on June 19, 1998. These standards were included in 45CSR25, previously filed and made effective July 1, 1999.

The purpose of this rule revision is to incorporate by reference amendments to these standards which were finalized in 64 Federal Register Volume 64, Page 52828 (September 30, 1999, and again the Federal Register Volume 64, on Page 63209 (November 19, 1999) and 65 Federal Register Volume 65 on Page 42292 (July 10,

FORM CSR - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

1 2000). These standards are promulgated under joint
2 authority of the Clean Air Act (CAA) and the Resource
3 Conservation and Recovery Act (RCRA). 40 CFR Part 63
4 Subpart EEE - National Emission Standards for Hazardous
5 Air Pollutants from Hazardous Waste Combustors, adopted
6 under the CAA, was previously included in 45CSR25, but the
7 proposed rules will now place this authority in 45CSR34,
8 the State's rule implementing the Clean Air Act and 40 CFR
9 Part 63.

10 The provisions of 40 CFR Parts 260, 261,
11 262, 264, 265, 266, and 270 of the RCRA rules, however,
12 will continue to be incorporated by reference in 45CSR25.
13 In addition, the proposed rule changes are required to
14 maintain consistency with the Office of Waste Management's
15 current rule (33CSR20) and with the current federal
16 regulations. The consistency of 45CSR25, 33CSR20 and
17 federal regulations is important for final authorization
18 of the West Virginia State RCRA Hazardous Waste Management
19 Program.

20 Upon authorization and promulgation of revisions
21 to 45CSR25, the rule will be submitted to the U.S.
22 Environmental Protection Agency for approval as part of
23 the State Hazardous Waste Management Program.

24 The floor is now open for public comment.

1 There being nothing further, this public hearing
2 for 45CSR25 is concluded.


3 (WHEREUPON, the public hearing
4 was concluded.)

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

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

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

Given under my hand and official seal this
22nd day of August, 2000.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

WV DIV. OF ENVIR. PROTECT.
OFFICE OF AIR QUALITY
2000 AUG 14 P 8:51

**Comments of the
WEST VIRGINIA MANUFACTURERS ASSOCIATION
regarding the
REVISIONS TO AIR QUALITY REGULATION
45 C.S.R. 6,15,25 and 30**

August 14, 2000

I. Introduction

The West Virginia Manufacturers Association (WVMA) is an organization devoted to the advancement of manufacturing interests and related businesses in West Virginia. The WVMA frequently offers comments on rules and regulations that are of interest to its members. The revisions to several rules found in Title 45 of the Code of state Regulations may have an effect of WVMA members, and warrant the following comments.

II. COMMENTS

A. 45 C.S.R. 6 (To Prevent and Control Air Pollution from the Combustion of Refuse)

We support the exemption from minor source permitting that the Office of Air Quality has proposed for temporary flares. We would urge that all flares be exempt from permitting if they do not qualify as a stationary source or a modification. Flares are air pollution control and safety devices that should be encouraged, not treated more stringently than other sources of air pollutants by requiring them to be permitted in all instances.

We oppose the requirements that are imposed on temporary flares in Section 6 of the rule, other than the requirement that they not qualify as stationary sources. We also oppose the new language in Section 4.3 incorporating 40 C.F.R. 60.18(c)(1), which would prohibit visible emissions other than 5 minutes every 2 hours. This is a new, more stringent standard for those flares that are

not affected by New Source Performance Standards, and there is no reason to impose it on existing flares or flares that are not regulated by NSPS.

B. 45 C.S.R. 15 (Emission Standards for Hazardous Air Pollutants Pursuant to 40 C.F.R. Part 61)

We support changes to the rule that leave greater discretion in the hands of the Director. The authority granted to the Director, rather than the Administrator, under Section 5.1.a is significantly changed. The old version allows the Administrator to retain authority over waivers of compliance and monitoring requirements. The new version gives the Director full authority over waivers of compliance, except where they involve alternative means of emission limitations, alternative control technology or alternate test methods and certain other elements. The new version also gives the Director full authority over monitoring requirements except alternative monitoring methods, waivers/ adjustments to record keeping and recording, emissions averaging and applicability determinations. We urge the Director to obtain this type of authority wherever possible.

C. 45 C.S.R. 25 (To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities)

Because the Office of Air Quality shares oversight of hazardous waste facilities with the Office of Waste Management, it is somewhat difficult to evaluate where the lines of authority are drawn. This is, to a great degree, inherent in the nature of dual authority, and is not a criticism of the two agencies. However, it might be possible to make the respective responsibilities of the two agencies a little clearer. For example, Section 1.5 of 45 C.S.R. 25 appears to incorporate by reference all of 33 C.S.R. 20, the Hazardous Waste Management Regulations. Does the OAQ thereby gain the same authority to regulate and interpret the provisions of that rule as has the Office of Waste Management? This sort of cross-reference leaves the regulated community with some

confusion as to which agency is responsible, and has authority for, which aspects of hazardous waste management. Table 25-A is helpful in this regard, but there are potentially conflicting requirements with regard to penalties, notifications and procedures. The DEP might consider revamping the two rules to clarify these points, or perhaps publishing a guidance explaining how it will coordinate the two rules.

The reference to 40 C.F.R. 270.42(j) should be amended, perhaps to (i), because no subsection (j) exists.

D. 45 C.S.R. 30 (Requirements for Operating Permits)

The OAQ has proposed changes to the Title V permitting rule, 45 C.S.R. 30, in order to address the deficiencies identified in EPA's November 15, 1995 Notice of Final Interim Approval for the West Virginia Operating Permits Program (60 *Fed. Reg.* 57352). One aspect of the OAQ's rule that did not receive final approval was Section 3.2.d, because 3.2.d.M (now Section 3.2.d.13) allowed the Director to identify insignificant sources or activities other than those specifically listed in Section 3.2.d. EPA objected to this because "EPA has no way to evaluate such activities against the criteria [for determining insignificance]. Furthermore, this provision allows new exemptions from permit requirements to be granted without prior EPA approval, an approach which is inconsistent with the requirements of [40 C.F.R. §70.5(c)]." 60 *Fed. Reg.* 57353 (November 15, 1995).

EPA's objection to Section 3.2.d.13 is mystifying given EPA's statement that it "has proposed to allow the Chief to determine on a permit-by-permit basis and within bounds approved by EPA as part of West Virginia's program additional activities to be considered as insignificant."

Id. Furthermore, EPA concedes that 40 C.F.R. §70.5 “allows permitting authorities to recognize certain activities as being clearly trivial (i.e., emissions units and activities which do not in anyway implicate applicable requirements) and that such trivial activities can be omitted from the permit application even if not included on a list of insignificant activities approved in a state’s Part 70 program. Permitting authorities may, on a case-by-case basis and without EPA approval, exempt additional activities which are clearly trivial.” *Id.* These sorts of case-by-case determinations of insignificance or triviality were clearly what was intended by Section 3.2.d.13.

WVMA understands the OAQ’s desire to eliminate EPA’s objection to 45 C.S.R. 30-3.2.d.13, however irrational it may seem. However, we believe that the OAQ has gone further than necessary. Section 3.2.e now provides that “units or activities deemed insignificant shall be identified in the permit applications with sufficient information for the Director verify that such units or activities are insignificant.” In other words, rather than being able to rely upon the list of insignificant activities in the rule, an applicant must now describe them in the permit application in order to qualify for relief from permitting requirements. This is burdensome and is not what the federal rule requires. Only those emissions units that are exempted because of size or production rate need be listed in the permit application. *See* 40 C.F.R. 70.5(c). Those emissions units that fall into the insignificant source categories that have been approved in Section 3.2.d of the state rule need not be listed on permit applications because their exemption is not conditioned on size or production rate. We suggest that the last sentence of Section 3.2.e be deleted or, in the alternative, be amended to read: “Units or activities designated as insignificant by the Director pursuant to Section 3.2.d.13 of this rule because of their size or production rate shall be identified in the permit application.”

Section 3.2.d should be revised as follows: "The following units or activities within a stationary source to this rule shall be deemed to be insignificant:"

III. CONCLUSION

The WVMA appreciates this opportunity to offer comments on the foregoing rules, and hopes that its suggestions for changes will be adopted by the Office of Air Quality

Submitted August 14, 2000.

Karen S. Price, President
West Virginia Manufacturers Association

45CSR25

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

RESPONSE TO COMMENTS

On August 14, 2000 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR25. Written comments were accepted through 6:00 PM on Monday, August 14, 2000. One comment was received from the West Virginia Manufacturers Association. The OAQ has summarized these comments and provides the following response.

COMMENTER: West Virginia Manufacturers Association

COMMENT 1: *The commenter stated it is somewhat difficult to evaluate where the lines of authority are drawn between the Office of Air Quality and the Office of Waste Management. Section 1.5 of 45CSR25 incorporates by reference all of 33CSR20, the Hazardous Waste Management Regulations. There are potentially conflicting requirements with regard to penalties, notifications and procedures.*

RESPONSE 1: Both the Hazardous Waste Management Act and the Air Pollution Control Act provide the authority and responsibility to the Director for promulgation of regulations to control and prevent air pollution from hazardous waste facilities. In particular, W. Va. Code §22-5-4 authorizes and empowers the Director to develop ways and means for the regulation and control of the air of the State and to promulgate legislative rules relating to the control of air pollution. Such language provides adequate and independent authority for the promulgation of 45CSR25. Promulgation of 45CSR25 furthers the policy and purpose of the State of West Virginia to achieve and maintain such levels of air quality as will protect human health and safety and prevent injury to plant and animal life.

Both the Office of Waste Management and the Office of Air Quality have legal authority and jurisdiction to regulate air emissions from hazardous waste facilities. The OAQ, however, recognizes the need to eliminate any unnecessary duplication and/or inconsistencies between the two programs and the OAQ has attempted to draft 45CSR25 with that purpose in mind. Incorporation by reference of the requirements of 33CSR20 should greatly assist in this regard. Lastly, EPA strongly recommended the adoption of 33CSR20 for consistency between the two rules in order to grant RCRA authorization approval. Please note that WV RCRA final authorization to implement and enforce 33CSR20 and 45CSR25 was approved by EPA on July 10, 2000. Any changes to the basic structure of 45CSR25 may jeopardize the State's ability to obtain Phase 3 RCRA authorization approval.

COMMENT 2: *The reference to 40 C.F.R. §270.42(j) should be amended because no subsection (j) exists.*

RESPONSE 2: OAQ disagrees. 40 C.F.R. §270.42(j) is titled "Combustion facility changes to meet part 63 MACT standards" and is found under 63 Federal Register 33829, June 19, 1998, and 65 Federal Register 42292 July 10, 2000.