



Executive Office
10 McJunkin Road
Nitro, West Virginia 25143-2506
Telephone: 304-759-0515
Fax: 304-759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

June 14, 1999

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

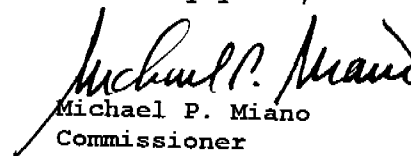
RE: 45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE
TREATMENT, STORAGE, OR DISPOSAL FACILITIES"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office as "Notice of Public Hearing/Comment Period."

If you should have questions or require additional information, please contact Carrie Chambers in my office at 759-0515. Your cooperation in this regard is very much appreciated.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp
Karen Watson
Carrie Chambers

**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 proposed rule changes are required to maintain consistency with the Office of Waste Management's current rule (33CSR20) and with the current federal regulations. Amendment of this rule is sought to adopt by reference the definitions, clarifications and technical amendments for air emission standards for tanks, surface impoundments, and containers published in the Federal Register on January 21, 1999 (64FR3382). The consistency of 45CSR25, 33CSR20 and federal rules 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 their June 10, 1999 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. There were no substantive changes as a result of their discussion. (See attached minutes of that meeting.)

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

June 10, 1999, Director's Conference Room, Nitro

The sixteenth meeting of the DEP Advisory Council was held Thursday, June 10, 1999, in the Director's Conference Room located in Nitro. Chairman Mike Miano called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Miano, Chairman
Jacqueline Hallinan
William Raney
Rick Roberts
William Samples

Environmental Protection:

Bill Adams	Pam Nixon
Andy Gallagher	Rocky Parsons
Tony Grbac	Cap Smith
Randy Huffman	Charlie Sturey
Mike Johnson	Barbara Taylor
Mike Lewis	Karen Watson
Robert Keatley	Mike Zeto

1) Review and Approval of March 22, 1999 Minutes. Chairman Miano called the meeting to order at 10:00 a.m. The first item on the agenda was approval of the minutes of the March 22 Advisory Council; they were approved as written.

2) Discussion of Proposed Rule Amendments - 2000 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's new rule-making procedure that was implemented by Director Miano in September 1998 to involve the 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 DEP's proposed legislative rule changes before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

Chairman Miano said he would like to begin by saying he hoped all Council members had received their draft rules by E-mail without any complications and they were able to review them before the meeting. He informed the Council that due to the large number of rules being proposed for the 2000 Legislative Session, DEP's program offices would review them with the

Council as thoroughly as possible, in the allotted time frame, and try to answer any questions or concerns the Council may have.

The following Office of Air Quality's proposed rule amendments were discussed by Karen Watson, OAQ, with assistance from Richard Keatley, also from the OAQ office:

- **45CSR1 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COAL REFUSE DISPOSAL AREAS"**
- **45CSR2 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM COMBUSTION OF FUEL IN INDIRECT HEAT EXCHANGERS"**
- **45CSR3 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF HOT MIX ASPHALT PLANTS"**
- **45CSR4 - "TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS"**
- **45CSR5 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS"**
- **45CSR6 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE"**
- **45CSR7 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MANUFACTURING PROCESSES AND ASSOCIATED OPERATIONS"**
- **45CSR10 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE EMISSION OF SULFUR OXIDES"**
- **45CSR12 - "AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE"**
- **45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"**
- **45CSR17 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER"**
- **45CSR18 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM DIRECT MEAT-FIRING DEVICES"**
- **45CSR23 - "TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS"**
- **45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES"**
- **45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"**
- **45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"**

Karen began by bringing the Council up to date on the status of two OAQ rules that were filed during the last session (or late in the session). 45CSR8 revised the ambient air quality for sulfur oxides and particulate matter, and 45CSR9 pertained to ambient air quality standards for carbon monoxide and ozone. The DC Circuit Court of Appeals has ordered EPA to show how they arrived at the new standards - EPA may go back to the previous standards. Karen also apprised the Council on the N_{ox} State Implementation Plan. The Circuit Court stayed the implementation of that rule and there are no plans to develop any other amendments in the

immediate future. 45CSR28, which is the emissions trading rule that was filed late in the 1999 Session, was not taken up by the Legislature, but plans are to put the rule on the July agenda of the Interim Legislative Committee.

Karen explained the reason for the unusually large number of DEP rules that are being filed for the next Legislative Session. She informed the Council that several of the rules were outdated and were amended for consistency and streamlining, and are a result of months of on-going meetings with stakeholders -- involving both the regulated community and citizens. A particulate matter and sulfur oxide work group was also involved. Those rule amendments as a result of the stakeholders process include: 45CSR1 (which is being repealed and replaced with language in 45CSR5), 45CSR2, 3, 4, 5, 6, 7, 10, 12, 17, and 18 (which is being repealed since the rule is no longer deemed necessary). The amendments to the remainder of the rules, 45CSR16, 23, 25, 33, and 34 were necessary to adopt by reference definitions, clarifications, technical amendments, etc., recently adopted by US EPA.

After several minutes of discussion, the Advisory Council recommended to the Director that the following amendments be made to the OAQ rules:

Mr. Samples pointed out that 45CSR2 and 45CSR7 contain different definitions for the term "opacity." The agency responded that this discrepancy was inadvertent and the language should be as it is in 45CSR2. The agency agreed to revise 45CSR7, subsection 2.23, accordingly.

Mr. Larry Harris was unable to attend the meeting; however, he expressed the following comments on 45CSR10 and 45CSR33 by e-mail. He stated that the State's rules should be more stringent than the federal counterpart regulations, since the State's streams are being adversely impacted. The agency responded that, at this point in time, it does not possess sufficient evidence to make the written finding that is required by WV Code §22-2-3a before promulgating a rule which is more stringent than a counterpart federal regulation.

Cap Smith and Mike Zeto discussed the following Office of Waste Management proposed rule amendments:

- 33CSR2 - "Sewage Sludge Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"

Mike Zeto briefed the Council on the proposed amendments to 33CSR2. He stated that in 1996 the Legislature mandated DEP to perform a study on soil limitations for sewage sludge land application sites. These amendments (as a result of the study) were to be proposed by June 30, 1999. Other amendments to the rule include specifying the analytical method used for soil analysis, placing conditions on variances from the soil limits for land application sites, providing an incentive for municipalities to produce higher quality compost products, and adjusting the sewage sludge limits for four metals. Mr. Zeto told the Council these amendments are being proposed to update other related areas of the rule in an attempt to provide better management of sewage sludge within the state.

Cap Smith discussed 33CSR20 with the Council. He informed the Council that amendments are proposed in section 2 of the rule that will allow the Office of Waste Management to delist hazardous wastes, which has previously been handled by EPA. The other significant amendments that are being proposed by adoption of the Federal Register pertain to revision standards for owners and operators of closed and closing hazardous waste management facilities, post closure permit requirements, and the closure process. These amendments are referenced throughout the rule and will hopefully expedite site cleanup while maintaining environmental protection.

There were several minutes of discussion on OWM's proposed rule amendments; however, no recommendations were made to the Director concerning the amendments.

Mike Lewis, Office of Oil and Gas, discussed the following new proposed rule:

- **35CSR7 - "Well Operations - Within and Around Gas Storage Reservoirs"**

Mike informed the Council that 35CSR7 is a proposed "new" rule for the O&G Office. The rule is needed to provide protection of the environment, the public, and the state's natural gas resources. It is the intent of the proposed rule to accomplish this by addressing certain operating procedures that oil and gas and gas storage operators are to use when drilling into or through a gas storage reservoir or the gas storage reservoir protective area. In order to assure absence of leaking gas, the proposed rule requires gas storage operators to conduct monitoring and inspections of gas storage wells.

There were no questions or discussion by the Council on this proposed rule.

The following proposed rules were discussed by the Office of Mining and Reclamation:

- **38CSR2 - "Surface Mining and Reclamation Rule"**
- **38CSR2A - "Rules for Mining and Restoration for Sandstone, Limestone, and Sand"**
- **38CSR2B - "RULES FOR MINING AND RECLAMATION OF MINERALS OTHER THAN COAL"**

Ed Griffith, Office of Surface Mining, discussed the proposed amendments to the Surface Mining and Reclamation Rule. Ed told the Council that there are only minor amendments being proposed to this year's rule. The proposed definition of "woodlands" in subsection 2.136 relates to the utilization of commercial woodlands in Approximate Original Contour variance areas. This change is being proposed in order for the state to meet the federal policy that is expected to change in July 1999. The proposed amendment to change the bonding requirements of mining operations that request variances from contemporaneous reclamation to the maximum amount per acre bond (\$5,000 per acre) is found in subdivision 14.15.f. All other amendments are being proposed in order to meet the requirements of the Office of Surface Mining's program amendments.

Rocky Parsons, OMR's Philippi Office, next addressed OMR's proposed rules 38CSR2A and 2B. Rocky explained to the Council members that 38CSR2B has been in place since 1983 and regulates all minerals other than coal. However, in accordance with the requirement that separate rules for limestone, sandstone, and sand are to be promulgated, DEP is proposing

38CSR2A which will regulate only those minerals - 38CSR2B will regulate all minerals other than limestone, sandstone, sand, and coal. Both proposed rules will regulate roads, blasting, drainage control, methods of operation, excess spoil disposal, revegetation, mapping, transfer of permits, permit renewals, revisions and incidental boundary revisions. 38CSR2A will provide provisions for restoration and 38CSR2B will include provisions for reclamation. Rocky gave the Council a brief history on the roadblocks the agency has encountered in the past several years in their attempt to amend the quarry statute. He said since the agency has been unsuccessful in that approach, it has become necessary to try to accomplish this through rule making. He informed the Council of a public meeting held the previous week to discuss the two proposed rules. He said the meeting was well attended and he believes the rules were well received by everyone in attendance.

The three OMR proposed rules were discussed by the Council members. Bill Raney said that although Rocky stated that the quarry rules have been well received by industry and the citizens, he is concerned about whether there has been enough time for the review of the proposed rules after they were drafted. He believes there would be a smoother transition into the rule making process, i.e., the public hearing/comment period, etc., if there had been more involvement from outside DEP during the drafting of the rules.

Mr. Larry Harris commented by e-mail 38CSR2A and 2B. His question is whether the siltation measures include silt fences where runoff might enter streams. He said it is not apparent what best management practices are for this situation, and he wonders if it needs to be spelled out. He knows of some operations in quarries where streams muddy after rainfalls, such as the Elkins and Waco quarries near Snowshoe, and he feels this is harming the streams. Do the new rules address this?

Rocky Parsons responded by saying that design criteria for drainage control structures is found in the technical handbook. Silt fences are not adequate for sediment control. The drainage system must be designed to hold .125 ac/ft of sediment for each acre of disturbed land. All runoff must pass through a drainage control structure. There is a provision for less sediment control (1/2 factor) for certain circumstances as approved by the Director. Effluent limits as established in the NPDES permit must be met.

Tony Grbac, Office of Surface Mining, addressed the following rule:

199CSR1 - "SURFACE MINING BLASTING RULE"

Tony began by briefing the Council on the history of the Surface Mining Blasting Rule. This rule is being proposed to comply with SB681 - passed during the last session. This bill created the Office of Explosives and Blasting and the Office of Coalfield Community Development, which is under the West Virginia Development Office. The proposed rule will regulate blasting laws and rules associated with all surface-mining operations. All duties currently performed by OMR related to blasting, and all rules which now regulate blasting (38CSR2C) will be transferred to this new office. Besides regulating blasting on all surface mining operations, it will also implement and oversee pre-blast survey processes; maintain and operate a system to receive and address questions, concerns and complaints relating to mining

operations; determine the qualifications for individuals and firms performing pre-blast surveys; establish the education, training, examination and certification of blasters; administer a claims process for property damage caused by blasting; and conduct a study of blasting and make recommendations regarding any appropriate rule or code changes.

Tony explained that the revenue generated by the proposed fee in 199CSR1 (one-half cent times the number of pounds of explosive material used during the preceding month for any purpose on the surface mining operations) would fund both the offices, as required by SB681. After one year of collection, both offices are to report to the Legislature as to whether the revenue collected is sufficient to operate both offices.

After several minutes of discussion between DEP and the Council members, Bill Raney expressed his concern in filing the rule for public hearing in the specified time frame. Mr. Raney asked if anyone outside DEP has been involved in drafting the rule. OMR answered by saying the rule was drafted by several staff within OMR. Mr. Raney replied that he believes there will be serious concerns with this rule once industry has had an opportunity to review it. He believes the rule drafting process definitely needs input from firms and individuals outside DEP, and he thinks the process will go smoother once everyone has had the opportunity to address their concerns. Mr. Raney recommended that the Director withhold this rule from the list of rules DEP proposes to file for public hearing/comment period in the coming week to give all interested parties a chance to participate in drafting the rule.

After discussion of this recommendation, Chairman Miano said he believes the best approach would be to continue with the filing of the proposed rule for public hearing, start the rule in the normal process and time frame, and in the meantime he would commit to putting together a work group of interested parties to discuss the rule. If DEP feels that more time is needed once the group begins their work on the rule, he will consider the possibility of either extending the comment period or filing for another public hearing. He said he will also decide in the near future whether DEP will file the rule as an "Emergency Rule" since HB 681 will become effective on June 11.

Council members also pointed out a typographical error in subdivision 3.9.a.3. of the rule relating to cross-references that will be corrected by DEP.

Barb Taylor and Mike Johnson, Office of Water Resources, briefed Council on the following rules:

- 47CSR57A - "Groundwater Protection Standards at Steam Electric Generating Facilities"
- 47CSR26 - "Water Pollution Control Permit Fee Schedule"
- 47CSR31 - "State Water Pollution Control Revolving Fund Program Rule"

Barb described the proposed "new" rule relating to Groundwater Protection Standards at Steam Electric Generating Facilities. She noted that the rule is a result of a Notice of Intent filed on October 24, 1994, by the West Virginia Steam Electric Generation Industry, with the Director of DEP, in accordance with 47CSR57 to apply for a class variance for all West Virginia power stations and associated disposal sites. At that time, DEP provided AEP and AP with the

opportunity to conduct a four-year study to gather the necessary data to support their variance request. The objectives were met by assembling and reviewing data, estimating potential impacts to receptors, and performing an economic assessment impact analysis to the industry, commercial enterprises, and citizens at large if compliance with the Groundwater Protection Act were required without benefit of the variances. After review of the four-year study, the Director determined that granting this request for a variance at these locations would not pose adverse effects to human health or the environment. There are no human or environmental sensitive receptors between the coal storage areas or as ponds; therefore, it is unlikely there will be adverse affects. Barb gave each member a copy of the four-year study on which the Director made his determination.

Chairman Miano told Council that DEP is definitely willing to look at such cases where extensive research and study have been done by the regulated community to back up their findings before granting such variances, and believes DEP will see more studies like this in the future.

Barb next apprised the members on the proposed amendments of the Water Pollution Control Permit Fee Schedule. She stated that amendments are being proposed as a result of HB 2684, passed March 11, 1999, and effective ninety days from passage. The Director is required to implement an emergency rule to implement the fee schedule authorized by the amendments by July 1, 1999. This rule was filed as an "Emergency Rule" on June 7, 1999.

Mike Johnson, Office of Water Resources' Construction Assistance Office, briefed the Council on 47CSR31 - the Water Pollution Control Revolving Fund Program rule. The amendments to this rule are being proposed to allow the State Revolving Fund low interest terms to be extended from 20 years to 30 years for communities that qualify as "disadvantaged." There is only one other state in the country to receive such approval from EPA. Mike informed the Council that he was only recently made aware of this extension by EPA to extend the low interest loans from 20 to 30 years while attending a meeting out of state. This rule was filed as an "Emergency Rule" on May 24, 1999.

Council members unanimously agreed that Mike Johnson should be commended for gathering this information and proposing the amendment to the rule that will enable disadvantaged communities to immediately take steps toward constructing watershed projects that will provide affordable monthly sewer rates.

Open Discussion:

Chairman Miano and Council members expressed their compliments to the program offices for all their hard work, especially with the stakeholders process -- it is obvious a lot of hard work has gone into the process in order to make their efforts more productive.

Bill Raney asked a question relating to the "More or Less" Stringency statement that appears on the front of some DEP rules, but not on others, and voiced his concern if DEP is paying close attention to this, or if the same statement is appearing with all proposed rules. Carrie Chambers from the Director's Office explained that statement was once required to be included in the "General" section of each rule; however, it is now placed in the briefing document that is attached to each rule, and required by the Secretary of State's Office and the

Legislative Rule-Making Review Committee, before it is filed. She went on to explain that with the rush to get draft copies of the rules to Council members as soon as possible, some of the Briefing Documents had not been completed, but would be attached to all DEP rules before they are filed for public hearing. Chairman Miano went on to say it is his belief that all program offices are carefully scrutinizing each rule before that decision is made.

Chairman Miano thanked Council for taking time from their busy schedules to review the extensive list of DEP's proposed rules. He informed the Council that the minutes would be left open for comment until Wednesday, June 16, at which time the minutes will be attached to the rules and filed with the Secretary of State's Office and the Legislative Rule-Making Review Committee for notice of public hearing/comment period.

Before adjourning the meeting, the Council informed Chairman Miano that they would prefer beginning future meetings at 10:00 a.m., instead of the usual time of 1:00 p.m. The meeting was then adjourned at 3:30 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: Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

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 changes in costs to administer this rule.
3. Objectives of these rules: Amendment of this rule is sought to adopt by reference the definitions, clarifications and technical amendments for air emission standards for tanks, surface impoundments, and containers in the federal counterpart regulation. The proposed rule changes are also required to reflect the Office of Waste Management's newly revised regulations at 33 CSR 20. The proposed changes will maintain consistency of this rule with the Office of Waste Management's current regulations and with the current federal rule.

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: 6/11/99

Signature of Agency Head or Authorized Representative

Karen G. Watson

45CSR25

FILED

JUN 16 9 40 AM '99

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

OFFICE OF ENVIRONMENTAL QUALITY
SECRETARY OF THE COMMONWEALTH OF VIRGINIA

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 20, 1999.~~
- 1.4. **Effective Date.** -- ~~July 1, 1999.~~
- 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, 1997~~8~~.

1.5.b. This rule also incorporates by reference the provisions contained in 33 CSR 20, effective July 1, 1998~~9~~, ~~except for the provisions of 33 CSR 20 which incorporate by reference the Code of Federal Regulations.~~

~~**1.5.c.** In addition to Table 25-A, this rule also incorporates by reference the provisions of 40 CFR §264.15 (b) (4), 40 CFR §264.73 (b) (6), and 40 CFR Part 264, 265 and 270, subparts AA, BB, CC, as amended on December 8, 1997, at Federal Register 64636.~~

1.5.c. This rule also incorporates by reference the provisions of 40 CFR Parts 262, 264 and 265, as amended and finalized in 64 Federal Register 3382 (January 21, 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", (~~June 11, 1993~~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

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, 1998~~9~~ are hereby adopted by reference; ~~except for the provisions of 33 CSR 20 which incorporate by reference the Code of Federal Regulations.~~

3.1.a. In case of a conflict between the Office of Air Quality and the Office of Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Director 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, 1997~~8~~, 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 Pollutants (NESHAP) preconstruction approval under 45 CSR 15 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.

~~**5.5.d.** The provisions of 40 CFR §270.42(j), including Appendix I, and 40 CFR §270.72(b)(8) shall apply to permit modifications for hazardous waste combustion units to meet standards under 40 CFR Part 63 subpart EEE as amended in 63 Federal Register 33781 (June 19, 1998).~~

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.

~~6.3. The provisions of 40CFR§261.4 and 40CFR§261.38 regarding the exclusion of comparable fuels from being considered a solid waste as amended in 63 Federal Register 33781 (June 19, 1998) are hereby incorporated by reference.~~

§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	\$ 500.00

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)		- Changes During Interim Status
		- 270.72(b)(8)	G	
4.	40 CFR	- 264	- X	- Miscellaneous Units
5.		- 270.23	- B	- Specific Requirements for Miscellaneous Units
6.	40 CFR	- 264, 265	- AA	- Air Emission Standards for Process Vents
7.		- 270.24	- B	- Specific Requirements for Process Vents
8.	40 CFR	- 264, 265	- BB	- Air Emission Standards for Equipment Leaks
9.		- 270.25	- B	- Specific Requirements for Equipments Leaks
10.	40 CFR	- 264, 265, 264.179, 265.178 264.200, 265.202 264.232, 265.231 265	CC I J K Appendix	- Organic Air Emission Standards for Tanks Surface Impoundments, and Containers 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 I to XIII
14.	40 CFR	270.22	B	Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
15.	40 CFR	270.66 270.66(d)(3) 270.66(g)	F	Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
16.	40 CFR	279.23	C	On-site Burning In Space Heater
17.	40 CFR	279.60 279.61 279.62 279.63	G	Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery
18.	40 CFR	270.14(b)(22) 270.24(b)(5) 270.1(c)(viii)(C)	B A	Part B application General Requirements General Information
19.	40 CFR	270.30(m)	B	Information repository
20.	40 CFR	261.6(c)(1) <u>261.4</u> <u>261.38</u>	A	Requirements for Recyclable Materials <u>Exclusion</u> <u>Comparable/Syngas Fuel Exclusion</u>

21.	40 CFR	-	262.34(a)(1)(i) &(ii)	-	C	-	Accumulation Time
22.	40 CFR	-	260.11	-	B	-	References
<u>23.</u>	<u>40 CFR</u>	=	<u>264.15(b)(4)</u>	=	<u>B</u>	=	<u>General Inspection Requirements</u>
<u>24.</u>	<u>40 CFR</u>	=	<u>264.73(b)(6)</u>	=	<u>E</u>	=	<u>Operating Records</u>
<u>25.</u>	<u>40 CFR</u>	=	<u>63.1211</u>	=	<u>EEE</u>	=	<u>Notification Requirements</u>
		-	<u>63.1212</u>	=		=	<u>Progress Reports</u>
		-	<u>63.1213</u>	=		=	<u>Certification</u>
		=	<u>63.1214</u>	=		=	<u>Extension of the Compliance Date</u>
		=	<u>63.1215</u>	=		=	<u>Sources that become affected sources after the effective date of this subpart</u>
		=	<u>63.1216</u>	=		=	<u>Extension of compliance date to install pollution prevention or waste minimization controls</u>

**Registered
Federal**

Thursday
January 21, 1999

Part V

**Environmental
Protection Agency**

40 CFR Parts 262, 264, and 265
Hazardous Waste Treatment, Storage, and
Disposal Facilities and Hazardous Waste
Generators; Organic Air Emission
Standards for Tanks, Surface
Impoundments, and Containers; Final
Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 264, and 265

[IL-64-2-5807; FRL-6221-9]

RIN 2060-AG44

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; clarification and technical amendment.

SUMMARY: Under the authority of the Resource Conservation and Recovery Act (RCRA), as amended, the EPA has promulgated standards (59 FR 62896, December 6, 1994) to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment. (The standards are known colloquially as the "subpart CC" standards due to their inclusion in subpart CC of parts 264 and 265 of the

RCRA subtitle C regulations). These air standards control organic emissions from certain tanks, containers, and surface impoundments (including tanks and containers at generators' facilities) used to manage hazardous waste capable of releasing organic waste constituents at levels which can harm human health and the environment.

Since publication of the final standards on December 6, 1994, the EPA has given public notice and taken comment on several proposed revisions to the final rule, and has made corresponding amendments. In response to public comments and inquiries, today's action makes clarifying amendments to certain regulatory text and reestablishes certain regulatory provisions that were previously contained in the rules and later inadvertently removed.

DATES: These amendments are effective January 21, 1999.

ADDRESSES: *Docket.* The supporting information used for the subpart CC rulemaking is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to this rulemaking are F-91-

CESP-FFFFF, F-92-CESA-FFFFF, F-94-CESF-FFFFF, F-94-CE2A-FFFFF, F-95-CE3A-FFFFF, F-96-CE3F-FFFFF, and F-96-CE4A-FFFFF. The RCRA docket is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia.

Review of docket materials is conducted at the Virginia address; the public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603-9230. The mailing address for the RCRA docket office is RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information about the RCRA Air Rules, or specific rule requirements of RCRA rules, please contact the RCRA Hotline, toll-free at (800) 424-9346. Contacts for specific information are listed in the "Supplementary Information" section of this preamble.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Businesses that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).
Federal Government	Federal agencies that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in the amendments to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 264.1030 and § 265.1030 of the RCRA subpart AA rules, § 264.1050 and § 265.1050 of the RCRA subpart BB rules, and § 264.1080 and § 265.1080 of the RCRA subpart CC air rules.

Informational Contacts

If you have questions regarding the applicability of this action to a particular situation, or questions about compliance approaches, permitting, enforcement and rule determinations, please contact the appropriate regional representative in the table below:

Region I:

Stephen Yee, (617) 565-3550
 Jim Gaffey, 565-3437
 U.S. EPA, Region I
 JFK Federal Building

Boston, MA 02203-0001

Region II:

Abdool Jabar, (212) 637-4131
 John Brogard, 637-4162
 Jim Sullivan, 637-4138
 U.S. EPA, Region II
 290 Broadway
 New York, NY 10007-1866

Region III:

Linda Matyskiela, (215) 566-3420
 Andrew Clibanoff, 566-3391
 U.S. EPA, Region III
 841 Chestnut Building
 Philadelphia, PA 19107

Region IV:

Denise Housley, (404) 562-8495
 Rick Gillam, 562-8498
 Jan Martin, 562-8593
 Anita Shipley, 562-8466
 Donna Wilkinson, 562-8490
 Judy SophianoIoulos, 562-8604
 David Langston, 562-8588
 U.S. EPA, Region IV
 61 Forsyth Street
 Atlanta, GA 30303

Region V:

Jae Lee, (312) 886-3781
 Uylaine McMahan, 886-4454
 Mike Mikulka, 886-6760
 Ivonne Vicente, 886-4449
 Wen Huang, 886-6191

U.S. EPA, Region V
 77 West Jackson Street
 Chicago, IL 60604

Region VI:

Michelle Peace, (214) 665-7430
 Teena Wooten, 665-2279
 U.S. EPA, Region VI
 1445 Ross Avenue, Suite 1200
 Dallas, TX 75202-2733

Region VII:

Ed Buckner, (913) 551-7621
 Ken Herstowski, 551-7631
 U.S. EPA, Region VII
 726 Minnesota Avenue
 Kansas City, KS 66101

Region VIII:

Mindy Mohr, (303) 312-6525
 Janice Pearson, 312-6354
 U.S. EPA, Region VIII
 999 18th Street, Suite 500
 Denver, CO 80202-2466

Region IX:

Stacy Braye, (415) 774-2056
 Jean Daniel, 774-2128
 U.S. EPA, Region IX
 75 Hawthorne Street
 San Francisco, CA 94105

Region X:

Linda Liu, (206) 553-1447
 David Bartus, 553-2804
 U.S. EPA, Region X

1200 Sixth Avenue
Seattle, WA 98101

For questions about testing or analytical methods mentioned in this document, please contact Ms. Rima Dishakjian, Emission Measurement Center (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-0443. For information concerning the analyses performed in developing this rule, contact Ms. Michele Aston, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2363, electronic mail address, aston.michele@epa.gov.

Background

Section 3004(n) of RCRA requires EPA to develop standards to control air emissions from hazardous waste treatment, storage, and disposal facilities (TSDF) as may be necessary to protect human health and the environment. This requirement echoes the general requirement in RCRA section 3004(a) and section 3002(a)(3) to develop standards to control hazardous waste management activities as may be necessary to protect human health and the environment. The Agency has issued a series of regulations to implement the section 3004(n) mandate; these regulations control air emissions from certain process vents and equipment leaks (part 264 and part 265, subparts AA and BB), and emissions from certain tanks, containers, and surface impoundments (the subpart CC standards, which are the primary subject of today's action).

The EPA today is making technical amendments to the final subpart AA and CC standards, and providing interpretations for certain provisions of those rules. Since the publication of the final subpart CC rule (59 FR 69826, December 4, 1994), the EPA has published four **Federal Register** documents that delayed the effective date of that rule, i.e., 60 FR 26828, May 19, 1995; 60 FR 56952, November 13, 1995; 61 FR 28508, June 5, 1996; 61 FR 59931, November 25, 1996). The November 1996 notice established the ultimate effective date of December 6, 1996. The EPA has also issued an indefinite stay of the standards specific to units managing wastes produced by certain organic peroxide manufacturing processes (60 FR 50426, September 29, 1995).

On August 14, 1995, the EPA published a **Federal Register** document entitled, "Proposed rule; data availability" (60 FR 41870) and opened

RCRA docket F-95-CE3A-FFFFF to accept comments on revisions that the EPA was considering for the final subpart CC standards. The EPA accepted public comments on the appropriateness of these revisions through October 13, 1995. Throughout 1996 and 1997, the EPA engaged in repeated discussions with representatives of the groups filing petitions for review challenging the subpart CC standards.

To further inform the affected public of the major clarifications, compliance options, and technical amendments being considered, the EPA conducted a series of seminars during August and September of 1995. At that time, a total of six seminars were held nationally. An updated series of six seminars was held in September through December 1996 and two additional seminars were held March and April of 1997 in conjunction with an industry trade association. (Refer to EPA RCRA Docket No. F-95-CE3A-FFFFF.) During these seminars, additional comments were received on the RCRA air rules for tanks, surface impoundments, and containers.

On February 9, 1996, the EPA published a **Federal Register** document (61 FR 4903), "Final rule; technical amendment," which made clarifying amendments in the regulatory text of the final standards, corrected typographical and grammatical errors, and clarified certain language in the preamble to the final rule to better convey the EPA's original intent.

On November 25, 1996, the EPA published a **Federal Register** document (61 FR 59932), "Final rule" that amended provisions of the final subparts AA, BB, CC rules to better convey the EPA's original intent, to provide additional flexibility to owners and operators who must comply with the rules, and to change the effective date of the requirements contained in the subpart CC rules to be December 6, 1996.

On December 8, 1997, the EPA published a **Federal Register** document (62 FR 64636), "Final rule; clarification and technical amendment" that amended provisions of the final subparts AA, BB, CC rules to clarify the regulatory text of the final standards; interpret those standards; correct typographical, printing, and grammatical errors; and clarify certain language published in the preambles of previous **Federal Register** documents.

Today's action makes technical amendments to the final subpart AA and CC rules in order to further clarify the regulatory text of the final standards; interpret those standards; and correct

typographical, printing, and grammatical errors.

Outline.

The information presented in this preamble is organized as follows:

- I. Part 262—Standards Applicable to Generators of Hazardous Waste
- II. Subpart AA: Air Emission Standards for Process Vents
- III. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers
 - A. Applicability
 - B. Waste Determination Procedures
 - C. Standards: Tanks
 - D. Standards: Containers
- IV. Administrative Requirements
 - A. Docket
 - B. Paperwork Reduction Act
 - C. Executive Order 12866
 - D. Regulatory Flexibility
 - E. Unfunded Mandates Reform Act
 - F. Executive Order 13045
 - G. National Technology Transfer and Advancement Act
 - H. Enhancing the Intergovernmental Partnership Under Executive Order 12875
 - I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
 - J. Submission to Congress and the General Accounting Office
 - K. Pollution Prevention Act
 - L. Immediate Effective Date
- V. Legal Authority

I. Subpart B—General Facility Standards

Today's action replaces the references to the subpart AA, BB, and CC standards in §§ 262.34(a)(1)(i) and 262.34(a)(1)(ii) as standards that must be met as conditions where a generator may accumulate hazardous waste on-site for 90 days or less without a RCRA permit or without having interim status. The references to subparts AA, BB, and CC were removed mistakenly by the November 25, 1996, **Federal Register** notice (61 FR 59950). At the time, it was thought that, since the subparts were also referenced in Subpart I—Use and Management of Containers at § 264.179 and in Subpart J—Tank Systems at § 264.200, the references in § 262.34, Accumulation time, were redundant. It was later determined that the references to subparts AA, BB, and CC are needed for clarity and the permit exemption criteria are being replaced by today's notice.

II. Subpart AA: Air Emission Standards for Process Vents

The definition of "equipment" contained in subpart AA at § 254.1031 is being revised to include "other connectors" in the list of components that are considered equipment under the subpart BB Air Emission Standards

for Equipment Leaks. The applicability section of the subpart BB rules states that the "subpart applies to equipment that contains or contacts hazardous waste * * *" However, when the subpart BB rules were originally promulgated in June of 1990 (55 FR 25495) the term "other connectors" was inadvertently left out of the equipment definition; this has caused some uncertainty regarding applicability of the rule to other connectors. Nonetheless, it is clear that the EPA intended other connectors to be included in the list of equipment covered by the rule. This is demonstrated by the fact that the term "other connectors" is used throughout § 264.1058 and § 265.1058 of the subpart BB standards whenever the equipment that is covered by this section of the rule is listed. Also, the preamble to the final subpart BB rules in Section V.C (i.e., Applicability and Requirements of Today's Final Standards) clearly states in discussing affected equipment at 55 FR 25465 (June 21, 1990) that " * * * flanges and *other connectors* must be monitored within 5 days by Reference Method 21 if evidence of a potential leak is found * * *" In addition, the original Clean Air Act equipment leak rules (i.e., subpart VV in 40 CFR 60.481) that served as the technical basis for the RCRA subpart BB equipment leak standards do include the term "other connector" in the definition of equipment subject to the rule. To correct this oversight, the definition of "equipment" contained in subpart AA at § 254.1031 is being revised to include "other connectors" in the list of components that are considered equipment under subpart BB.

The definition for "open-ended valve or line" is being amended to replace the term "process fluid" with the words "hazardous waste." The definition has included the term "process fluid" to characterize an open-ended valve or line since the rule was originally published on June 21, 1990 (55 FR 25495); i.e., " * * * one side of the valve seat in contact with process fluid and one side open to the atmosphere * * *" It was recently brought to the EPA's attention that the definition should use the term "hazardous waste" rather than "process fluid", since the subpart BB rules only apply to equipment (e.g., an open-ended valve or line) that contains or contacts hazardous waste as stated in the applicability sections at § 264.1050(b) and § 265.1050(b). In addition, the RCRA air rules for open-ended valves or lines (at § 264.1056 and § 265.1056) clearly refer to the material or fluid in the valve or line as being hazardous

waste. Therefore, as a part of today's action the definition is being revised to avoid any confusion regarding what constitutes an open-ended line or valve.

Also within subpart AA, a definition is being added for "sampling connection system." This is being done in order to clarify the difference between a "sampling connection" and an "open-ended line" which have significantly different technical requirements under the subpart BB rules. There has been some confusion regarding open-ended lines being considered as sampling connections and the new definition should eliminate any potential for overlap.

III. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

A. Applicability

In today's action, the EPA is amending paragraph (b)(5) of § 264.1080 and § 265.1080 to clarify that waste management units that are used solely for on-site treatment or storage of hazardous waste that is "placed in the unit" as a result of implementing Federally required remedial activities are exempt from the requirements of subpart CC. The language originally used in this paragraph stated that the hazardous waste must be "generated" as a result of implementing Federally required remedial activities. The word "generated" does carry a certain programmatic connotation; therefore, the word "generated" is being replaced because of the potential confusion caused by some of the regulated community taking a strictly regulatory interpretation of the term "generated" (i.e. viewing it as a term of art) rather than a more literal, plain English interpretation as was intended by the EPA in this context. For example, under the RCRA regulations, section 260.10, the term "generate" carries a particular legal context which was not intended to be strictly applied in this paragraph. Therefore, the word "generated" is being replaced to avoid any misinterpretation.

B. Waste Determination Procedures

Paragraph (a)(1)(i) of § 264.1083 and § 265.1084 is being amended to add new paragraphs (i) and (ii) that affect the requirements for when an owner or operator must make a determination of the volatile organic (VO) concentration of the waste stream. These new paragraphs effectively reestablish the previously contained requirements for determining VO concentration for hazardous wastes placed in a waste management unit exempted from using

subpart CC air emission controls because the waste has an average VO concentration at the point of waste origination less than the action level of 500 ppmw.

As originally published, the subpart CC rules required that an initial determination of the average VO concentration of the hazardous waste stream be made before the first time any portion of the waste is placed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. (See § 264.1083(a)(1), § 265.1084(a)(1), § 265.1084(a)(2)(i)(A), § 265.1084(a)(2)(ii)(A), § 265.1084(a)(3)(i)(A), and § 265.1084(a)(3)(ii) in 59 FR 62938 through 62939, December 6, 1994.) Thereafter, a determination of the VO concentration was required for each averaging period that a hazardous waste is managed in the unit. (See § 265.1084(a)(5)(ii) in 59 FR 62939, December 6, 1994.) In addition, the owner or operator was required to perform a new determination of the hazardous waste's VO concentration whenever changes to the source generating the waste stream were reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration action level or concentration limits. (See § 265.1084(a)(2)(i)(B), § 265.1084(a)(2)(ii)(B), and § 265.1084(a)(3)(i)(B) in 59 FR 62939, December 6, 1994.)

In November 1996, the EPA expanded and reorganized the waste determination procedures in § 264.1083 and § 265.1084 to allow various test methods other than Method 25D to be used as direct measurement in a waste determination. At this time, the EPA also revised the waste determination procedures such that, for both point of waste origination and point of waste treatment, no distinction was made for batch or continuous processes or for whether the owner or operator is the generator or receives the waste from off-site. In making these changes, the EPA inadvertently removed the requirements, in paragraphs (2) and (3) of § 265.1084(a) and in paragraph § 265.1084(a)(5)(ii), for when a determination of VO concentration is required. Today's amendments reestablish those requirements specifying when an owner or operator must determine the VO concentration of a hazardous waste stream.

Under the restored language in today's amendments, the owner or operator must perform an initial

determination of the average VO concentration of the hazardous waste stream before the first time any portion of the waste is placed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. Following the initial VO concentration determination, a determination of the VO concentration is required for each averaging period that a hazardous waste is managed in the unit. This means that the owner or operator must have a current and up-to-date VO concentration determination on record for each hazardous waste stream managed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. This VO concentration determination must reflect the VO concentration of the waste currently managed in the unit over the time frame covered by the specified averaging period.

In addition, the owner or operator is required to perform a new determination of the hazardous waste's VO concentration whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration action level or concentration limits.

The following example illustrates the requirement that the owner or operator have an initial as well as a current and up-to-date VO concentration determination on record for each hazardous waste stream managed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. Assume that a TSD owner has a production process that continuously generates a hazardous waste. Just prior to December 6, 1996, the effective date of the rule, the TSD owner determines by direct measurement using Method 25D that, using a 6-month averaging period, the particular hazardous waste stream had an average VO concentration of 250 ppmw at the point of waste origination. The owner then records that for the 6-month period beginning with December 6, 1996, this particular generated waste stream has an average VO concentration of 250 ppmw; this serves as the initial determination of VO concentration as required under § 265.1084(a)(1)(i) in today's amendments.

Because the example waste stream has a VO concentration less than the action level of 500 ppmw, the owner manages the hazardous waste in a unit that is not equipped with subpart CC air emission controls. Under the requirements being reestablished in today's amendments, by June 6, 1997 (i.e., the end of the first 6-

month averaging period) the owner must perform a new waste VO concentration determination for the next 6-month averaging period that would run from June 6 to December 6, 1997. In this example, the owner now elects to perform the new VO concentration determination using knowledge of the waste rather than using direct measurement as was done previously using Method 25D. The owner however does use the results of the first direct measurement, together with process engineering knowledge and experience (e.g., no change has been made to the raw materials or process technology for the steady-state production operation generating the waste) as the basis for the "knowledge" based VO concentration determination. Therefore, the owner records that for the 6-month averaging period from June 6 to December 6, 1997, this particular waste stream has an average VO concentration of 250 ppmw. This waste VO concentration determination meets the requirements in § 265.1084(a)(1)(i) of today's amendments that a VO concentration determination be made for *each* averaging period that a hazardous waste is managed in a unit exempt from air emission controls under the action level criteria.

To continue the example, the owner repeats this same process for the averaging period that runs from December 6, 1997, to June 6, 1998. However, in April 1998, the owner modifies the production process and determines that this modification has the potential to cause the average VO concentration of the hazardous waste generated to increase to a level that is equal to or greater than the 500 ppmw action level. In this situation, under the requirements reestablished by today's action, the owner would be required to perform a new determination of the average VO concentration because of the changes to the source generating the waste. (See § 265.1084(a)(1)(ii) in today's amendments.)

Without today's amendments to the waste determination requirements of subpart CC, there is effectively no requirement (or guidance) provided within the rules as to when an owner or operator must determine the VO concentration of a hazardous waste stream. This was not EPA's intent. We intended that the owner or operator maintain a current VO concentration determination for each averaging period. This is clearly illustrated by the preamble discussion in the December 6, 1994 **Federal Register** notice, which states (at 59 FR 62916): "If an average volatile organic concentration is used, an initial waste determination must be

performed for *each* averaging period."

Today's amendments reestablish requirements specifying when an owner or operator must determine the VO concentration of a hazardous waste stream.

In other changes to the waste determination provisions of subpart CC, the EPA is amending the waste sampling provisions of the rule to clarify requirements related to the sampling period. In November 1996, the EPA expanded and reorganized the waste determination procedures in § 264.1083 and § 265.1084; the requirements regarding sampling of the hazardous waste stream for a direct measurement of the VO concentration were also revised and reformatted. In doing so, provisions previously in the rule at § 265.1084(a)(5)(iv)(A) and § 265.1084(b)(4)(iv)(A) (see 59 FR 62939 and 59 FR 62941, December 6, 1994), requiring that all waste samples for a particular waste determination be collected within a 1-hour period and that information on waste quantity and operating conditions relative to the waste samples be prepared and recorded, were inadvertently left out of the rule language. This language is being restored in today's amendments.

On December 8, 1997 (see 62 FR 64664), the EPA amended the language regarding sampling for a waste determination in § 265.1084(a)(3)(ii)(B) and § 265.1084(b)(3)(ii)(B) to clarify the EPA's intent regarding the number of samples required for a waste determination. The amended paragraph stated (as did the published rule language at § 265.1084(a)(5)(iv)(A) and § 265.1084(b)(4)(iv)(A) [see 59 FR 62939, December 6, 1994]), that the average of four or more sample results constitutes a waste determination for the waste stream. This amended paragraph further clarified that one or more waste determinations may be needed to represent the average VO concentration over the complete range of waste compositions and quantities that occur during the entire averaging period (due to normal variations in the operating conditions for the source or process generating the hazardous waste stream). Thus, to determine the average VO concentration of a waste stream generated by a process with large seasonal variations in waste quantity, or fluctuations in ambient temperature, several waste determinations (consisting of four or more samples each) will be required. In making the change in December of 1997, the amendment failed to include the language previously contained at § 265.1084(a)(5)(iv)(A) and § 265.1084(b)(4)(iv)(A) (see 59 FR 62939

and 59 FR 62941, December 6, 1994) that the four samples needed for a waste determination are required to be collected within a 1-hour time period and that certain information relative to the waste samples must be recorded. Today's amendments to § 265.1084(a)(3)(ii) and § 265.1084(b)(3)(ii) add language in paragraph (B) that clearly states that "all samples for a given waste determination shall be collected within a 1-hour period;" and add a new paragraph (D) that reestablishes the requirement that "sufficient information shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating [or treating] the hazardous waste represented by the samples." The information on waste quantity and operating conditions is needed to properly calculate the mass-weighted average VO concentration over the averaging period and to assess that the averaging period used adequately characterizes the source or process over the time period selected for the averaging period. The type of information and data needed to meet this requirement should be clearly specified in the "site sampling plan" required under paragraph (C) of § 265.1084(a)(3)(ii) and § 265.1084(b)(3)(ii).

Also in the waste determination section of the rule, a portion of sections § 265.1084(a)(3)(iii) and § 265.1084(b)(3)(iii) is amended by today's action in order to clarify that, if the owner or operator elects to adjust the individual test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D, the adjustment must be made to *all* individual chemical constituents that comprise the average VO concentration. The constituent adjustment cannot be made on a selective constituent basis. Because some of the constituent-specific adjustment factors are greater than 1.0, selective use of the constituent adjustment may not provide an accurate representation of the average VO concentration as measured by Method 25D. The existing rule language at § 265.1084(a)(3)(iii) and § 265.1084(b)(3)(iii) states that "the concentration of each individual chemical constituent measured in the waste" may be corrected by multiplying the measured concentration by the constituent-specific adjustment factor. The same point is made in

§ 265.1084(a)(4)(iii) which specifies the procedure to be used to adjust the data. This paragraph states that "the measured concentration for each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor." The EPA's use of the phrase "each individual chemical constituent contained in the wastes" is intended to convey the meaning that *all* constituents in the waste must be adjusted using the appropriate individual adjustment factor, if the owner or operator elects to adjust the data. The EPA has in no way stated or otherwise implied that constituent-specific concentration test data can be adjusted on a selective constituent basis to characterize the VO concentration.

C. Standards: Tanks

Paragraph (h)(3) of the tank standards in § 264.1084 and § 265.1085 is being amended to allow owners or operators that elect to use a pressure tank, to control air emissions under the subpart CC rule, to purge the inert materials from the pressure tank as is required by normal operation (i.e., good engineering practices) for this type of tank system. The rule requires that, whenever hazardous waste is in a pressure tank, the tank must operate as a closed system that does not vent to the atmosphere. With today's changes, the owner or operator is allowed to purge the tank as long as the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the subpart CC rule requirements for closed-vent systems and control devices. A tank operating in this manner is technically meeting the alternative requirements for tanks using Tank Level 2 controls as specified in § 264.1084(d)(3) and § 265.1085(d)(3) which applies tanks vented through a closed-vent system to a control device. Therefore, venting of a pressure tank under controlled conditions complies with the subpart CC standards for Tank Level 2 controls and is allowed under the rules.

D. Standards: Containers

Transfer requirements are being added to the Level 3 container standards as a part of today's action. These requirements are essentially the same as those for the (less stringent) Level 2 container standards. These transfer requirements for Level 3 containers were inadvertently left out of the subpart CC requirements when they were published in November 1996, 61 FR 59962. The EPA had intended that the Level 3 container standards incorporate these transfer requirements

and today's amendments rectify that oversight.

VI Administrative Requirements

A. Docket

Six RCRA dockets contain information pertaining to today's rulemaking: (1) RCRA docket number F-91-CESP-FFFFF, which contains copies of all BID references and other information related to the development of the rule up through proposal; (2) RCRA docket number F-92-CESA-FFFFF, which contains copies of the supplemental data made available for public comment prior to promulgation; (3) RCRA docket number F-94-CESF-FFFFF, which contains copies of all BID references and other information related to development of the final rule following proposal; (4) RCRA docket number F-94-CE2A-FFFFF, which contains information pertaining to waste stabilization operations performed in tanks; (5) RCRA docket number F-95-CE3A-FFFFF, which contains information about potential final rule revisions made available for public comment; and (6) RCRA docket number F-96-CE4A-FFFFF, which contains a copy of each of the comment letters submitted in regard to the revisions that the EPA was considering for the final subpart CC standards. The public may review all materials in these dockets at the EPA RCRA Docket Office.

The EPA RCRA Docket Office is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603-9230. The mailing address for the RCRA Docket Office is RCRA Information Center (5305W), 401 M Street SW, Washington, DC 20460. The Docket Office is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

B. Paperwork Reduction Act

The information collection requirements of the previously promulgated RCRA air rules were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1593.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260-2740.

Today's amendments to the RCRA air rules should have only a minor impact on the information collection burden estimates made previously, and that impact is expected to be a reduction. The changes consist of new definitions, alternative test procedures, clarifications of requirements, and additional compliance options. The changes are not additional requirements, but rather, are reductions in previously published requirements. In a number of instances, the changes simply restore inadvertently deleted provisions, and all information collection requirements in such provisions were previously approved. The overall information-keeping requirements in the rule are being reduced. Consequently, the ICR has not been revised.

C. Executive Order 12866

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is "significant" and, therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The RCRA subpart CC air rules published on December 6, 1994, were considered significant under Executive Order 12866, and EPA accordingly prepared a regulatory impact analysis (RIA). The amendments published today make technical changes to the rule and correct structural problems with the drafting of some sections. This action is not a "significant regulatory action" within the meaning of Executive Order 12866; thus, OMB review of the action is not required.

D. Regulatory Flexibility

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by

the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities such as small businesses, small organization and small governments. However, no regulatory flexibility analysis is required if the agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities. For the reasons discussed in the December 6, 1994 *Federal Register* (59 FR 62923), the subpart CC rules themselves do not have a significant impact on a substantial number of small entities. The present rule only makes technical changes to the subpart AA and CC rules, and does not add new control requirements to the December 1994 rule. The amendments in fact reduce the already-existing requirements. Therefore, I certify that this rule will not have a significant adverse economic impact on a substantial number of small entities and therefore does not require a regulatory flexibility analysis.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) economically significant as defined under E.O. 12866, and (2) the environmental health or safety risk

addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These final amendments are not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because they are not economically significant regulatory actions as defined by E.O. 12866.

G. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards. Today's action does not put forth any technical standards as part of the clarifying amendments. Therefore, consideration of voluntary consensus standards was not required.

H. Enhancing the Intergovernmental Partnership Under Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition,

Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's action does not create a mandate on State, local or tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's amendments to the final rule do not significantly or uniquely affect the communities of Indian tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. § 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of January 21, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. § 804(2).

K. Pollution Prevention Act

The Pollution Prevention Act of 1990 states that pollution should be prevented or reduced at the source whenever feasible. As originally published, the final subpart AA, BB, and CC emission standards for units managing hazardous wastes contain an applicability threshold or action level formatted in terms of either a total or volatile organic concentration of the hazardous waste that must be exceeded in order for a particular standard to apply. By formulating the standard in this way, flexibility is allowed for facility owners or operators to initiate process modifications or incorporate treatment technologies that will accomplish the same environmental results at lower costs; this encourages pollution prevention alternatives that reduce the organic content of the hazardous waste generated. Today's amendments to the RCRA air rules in no way affect the pollution prevention alternatives and measures previously incorporated into the final rules.

L. Immediate Effective Date

The EPA has determined to issue this rule without first proposing it and to make today's action effective immediately. The EPA believes that the corrections being made in today's action are either interpretations of existing regulations which do not require prior notice and opportunity for comment, or are technical corrections of obvious errors in the published rules (for example, corrections to regulations inconsistent with or not carrying out statements in the preamble or

Background Information Document, or restoration of provisions which were deleted inadvertently). Comment on such changes is unnecessary, within the meaning of 5 USC 553(b)(3)(B). For the same reason, there is good cause for the rules to be made effective immediately, within the meaning of 5 U.S.C. 553(d)(3).

VII. Legal Authority

These regulations are amended under the authority of sections 2002, 3001-3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6921-6927, 6930, and 6974).

List of Subjects

40 CFR part 262

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Container, Control device, Hazardous waste, Inspection, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Tank, TSD, Waste determination.

Dated: January 8, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, parts 262, 264, and 265 of the Code of Federal Regulations are amended as follows:

PART 262—STANDARD APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6299, 6925, 6937, and 6938, unless otherwise noted.

2. Section 262.34 is amended by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows:

§ 262.34 Accumulation time.

(a) * * *

(1) * * *

(i) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265; and/or

(ii) In tanks and the generator complies with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265 except §§ 265.197(c) and 265.200; and/or

* * * * *

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

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

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

Subpart AA—Air Emission Standards for Process Vents

4. Section 264.1031 is amended by revising the definitions of "Equipment" and "Open-ended valve or line" and adding a new definition for the term "Sampling connection system" in alphabetical order to read as follows:

§ 264.1031 Definitions.

* * * * *

Equipment means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by this subpart.

* * * * *

Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous waste and one side open to the atmosphere, either directly or through open piping.

* * * * *

Sampling connection system means an assembly of equipment within a process or waste management unit used during periods of representative operation to take samples of the process or waste fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

5. Section 264.1080 is amended by revising paragraph (b)(5) to read as follows:

§ 264.1080 Applicability.

* * * * *

(b) * * *

(5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or State authorities.

* * * * *

6. Section 264.1083 is amended by adding new paragraphs (a)(1)(i), (a)(1)(ii), (b)(1)(i), and (b)(1)(ii) to read as follows:

§ 264.1083 Waste determination procedures.

(a) * * *

(1) * * *

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of § 264.1082(c)(1) of this subpart from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

(ii) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in § 264.1082 of this subpart.

* * * * *

(b) * * *

(1) * * *

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in the exempt waste management unit, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(ii) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in § 264.1082 (c)(2) of this subpart are not achieved.

* * * * *

7. Section 264.1084 is amended by revising paragraph (h)(3) to read as follows:

§ 264.1084 Standards: Tanks.

* * * * *

(h) * * *

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in § 265.1081 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of § 264.1087 of this subpart.

* * * * *

8. Section 264.1086 is amended by adding new paragraph (e)(6) to read as follows:

§ 264.1086 Standards: Containers.

* * * * *

(e) * * *

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

* * * * *

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

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

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

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

10. Section 265.1080 is amended by revising paragraph (b)(5) to read as follows:

§ 265.1080 Applicability.

* * * * *

(b) * * *

(5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or State authorities.

* * * * *

11. Section 265.1084 is amended by adding new paragraphs (a)(1)(i), (a)(1)(ii), (a)(3)(ii)(D), (b)(1)(i), (b)(1)(ii) and (b)(3)(ii)(D) and by revising paragraphs (a)(3)(ii)(B), (a)(3)(iii) introductory text, (b)(3)(ii)(B), and (b)(3)(iii) introductory text, to read as follows:

§ 265.1084 Waste determination procedures.

(a) * * *

(1) * * *

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of § 265.1083(c)(1) of this subpart from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

(ii) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the VO concentration limit specified in § 265.1083(c)(1) of this subpart.

* * * * *

(3) * * *

(ii) * * *

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in

waste quantity or fluctuations in ambient temperature.

* * * * *

(D) Sufficient information, as specified in the "site sampling plan" required under paragraph (a)(3)(ii)(C) of this section, shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous waste represented by the samples.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (a)(3)(iii)(A) through (a)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m³] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (a)(3)(iii)(B) through (a)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (a)(3)(iii)(H) of this section must be followed. At the owner or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific

adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

* * * * *

(b) * * *

(1) * * *

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in a waste management unit exempted under the provisions of § 265.1083(c)(2), § 265.1083(c)(3), or § 265.1083(c)(4) of this subpart from using air emission controls, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(ii) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in § 265.1083(c)(2), § 265.1083(c)(3), or § 265.1083(c)(4) of this subpart are not achieved.

* * * * *

(3) * * *

(ii) * * *

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the process generating or treating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

* * * * *

(D) Sufficient information, as specified in the "site sampling plan" required under paragraph (C) of (b)(3)(ii) this section, § 265.1084(b)(3)(ii), shall be

prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the process treating the hazardous waste represented by the samples.

* * * * *

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (b)(3)(iii)(A) through (b)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system to determine if the conditions of § 264.1082(c)(2)(i) through (c)(2)(vi) or § 265.1083(c)(2)(i) through (c)(2)(vi) are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m³] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (b)(3)(iii)(B) through (b)(3)(iii)(C) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part

136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (b)(3)(iii)(H) of this section must be followed. At the owner or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant equal to or greater than 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

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12. Section 265.1085 is amended by replacing paragraph (h)(3) revising to read as follows:

§ 265.1085 Standards: Tanks.

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(h) * * *

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the

following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in § 265.1081 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of § 265.1088 of this subpart.

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13. Section 265.1087 is amended by adding new paragraph (e)(6) to read as follows:

§ 265.1087 Standards: Containers.

* * * * *

(e) * * *

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

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