

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

FORM #3

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OFFICE OF THE SECRETARY OF STATE

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

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

CITE AUTHORITY: W. Va. Code §§ 22-5-1 et seq. & 22-18-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES  , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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

Karen G. Watson, Attorney  
Authorized Signature



Executive Office  
#10 McJunkin Road  
Nitro, WV 25143-2506  
Telephone: (304) 759-0515  
Fax: (304) 759-0526

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## West Virginia Bureau of Environment

---

Cecil H. Underwood  
Governor

Michael P. Miano  
Commissioner

July 29, 1999

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

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

Dear Ms. Cooper:

This letter is to give my approval for filing of the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of an Agency-Approved Rule."

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

Sincerely yours,

A handwritten signature in black ink that reads "Michael P. Miano".

Michael P. Miano  
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp  
Karen Watson  
Carrie Chambers

**Questionnaire**

DATE: August 6, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection  
Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311-2599  
Phone: 304-558-4022

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

1. Authorizing statute (s) citation: W. Va. Code §§ 22-5-1 et seq. & 22-18-1 et seq.
  
2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 16, 1999 and July 14, 1999
  
- b. What other notice, including advertising, did you give of the hearing?
  - I. Class I legal advertisement. *Charleston Daily Mail and Charleston Gazette.*
  - II. Sent a copy of the Public Notice to our agency mailing list.
  - III. DEP's "*Public Notice Bulletin*" (June and July issues)
  - IV. Public Notices placed on agency's Web site:  
<http://www.dep.state.wv.us/oaq/>
  - V. Press Release
  
- c. Date of Public Hearing (s) or Public Comment Period ended:  
Public Hearing -- July 19, 1999  
Public Comment Period ended -- July 28, 1999

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

Attached  X  No comments received \_\_\_\_\_

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

August 5<sup>th</sup> 1999  \_\_\_\_\_

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

\_\_\_\_\_ Edward L. Kropp, Chief  
\_\_\_\_\_ 1558 Washington Street, East  
\_\_\_\_\_ Charleston, WV 25311-2599  
Phone: 304-558-4022  
Fax: 304-558-3287  
E-Mail: skropp@mail.dep.state.wv.us

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

\_\_\_\_\_ See "f" above  
\_\_\_\_\_  
\_\_\_\_\_

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

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

N/A  
\_\_\_\_\_  
\_\_\_\_\_

- b. Date of hearing or comment period:

N/A  
\_\_\_\_\_

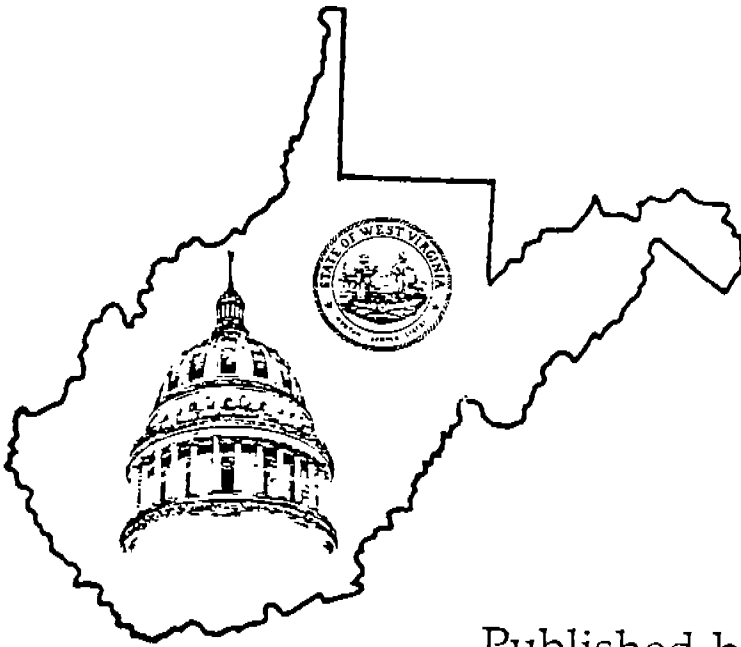
- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A  
\_\_\_\_\_

- d. Attach findings and determinations and reasons:

Attached N/A  
\_\_\_\_\_

# WEST VIRGINIA REGISTER



Published by Ken Hechler, Secretary of State

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*Issue 25*

*June 18, 1999*

*Pages 1026-1084*

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*Judy Cooper  
Director*

*Lisa Blake  
Leah Powell  
Administrative Assistants*

*Secretary of State  
Administrative Law Division  
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www.secretary.state.wv.us/sos*

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## CHRONOLOGICAL INDEX VOLUME XVI ISSUE 25

## PROPOSED RULES FILED FOR PUBLIC HEARING

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Air Quality (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-16)	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60 Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-17)	To Prevent & Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage & Other Sources of Fugitive Particulate Matter Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-18)	To Prevent & Control Particulate Air Pollution from Direct Meat- Firing Devices Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-23)	To Prevent & Control Emissions from Municipal Solid Waste Landfills Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities Legislative	§§22-5-1 et seq. & §§22-18-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-33)	Acid Rain Provisions & Permits Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63 Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above

## RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-16)	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60 \$5.60 w/out federal reg's \$22.80 w/federal reg's Legislative	6/16/99	7/19/99		7/31/98	Modified & Approved 12/15/98 Filed 1/5/99	HB 2533	5/20/99	6/1/99
Air Quality (45-16)	Standards of Performance for New Stationary Sources \$2.40 Legislative	6/16/98	7/21/98						
Air Quality (45-17)	To Prevent & Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage & other Sources of Fugitive Particulate Matter \$5.60 Legislative	6/16/99	7/19/99						
Air Quality (45-18)	To Prevent & Control Particulate Air Pollution from Direct Meat-Firing Devices \$5.20 Legislative	6/16/99	7/19/99						
Air Quality (45-23)	To Prevent & Control Emissions From Municipal Solid Waste Landfills \$5.80 w/out federal reg's \$9.20 w/federal reg's Legislative	6/16/99	7/19/99						
Air Quality (45-24)	To Prevent & Control Emissions From Hospital/Medical/Infectious Waste Incinerators \$4.20 Legislative	6/16/98	7/21/98		8/3/98	Modified & Amended 12/15/98 Filed 1/5/99	HB 2533	5/20/99	6/1/99
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities \$9.80 w/out federal reg's \$12.00 w/federal reg's	6/16/99	7/19/99						
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities \$7.00 Legislative	6/16/98	7/21/98		8/3/98	Modified & Amended 12/15/98 Filed 1/5/99	HB 2533	5/20/99	7/1/99



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WEST VIRGINIA  
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WEST VIRGINIA  
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 ADMINISTRATIVE LAW DIVISION

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 JUL 19 1999  
 FORM # 1

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45  
 RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §§22-5-1 et seq. & §§22-18-1 et seq.  
 AMENDMENT TO AN EXISTING RULE: YES X NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25  
 TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:       
 TITLE OF RULE BEING PROPOSED:     

DATE OF PUBLIC HEARING: July 19, 1999 TIME: 6:00 p.m.  
 LOCATION OF PUBLIC HEARING: Office of Air Quality - Conference Room  
1558 Washington Street, East  
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL      WRITTEN BOTH X  
 COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Edward L. Krupp, Chief  
Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311-2599

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.  
 The issues to be heard shall be limited to the proposed rule.  
 ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

*Karen G. Watson*  
 Karen G. Watson, Attorney

*2806/13/13/99*

WEST VIRGINIA  
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NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45  
 RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §§22-5-1 et seq.  
 AMENDMENT TO AN EXISTING RULE: YES X NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 33  
 TITLE OF RULE BEING AMENDED: "Acid Rain Provisions and Permits"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:       
 TITLE OF RULE BEING PROPOSED:     

DATE OF PUBLIC HEARING: July 19, 1999 TIME: 6:00 p.m.  
 LOCATION OF PUBLIC HEARING: Office of Air Quality - Conference Room  
1558 Washington Street, East  
Charleston, WV 25311-2599

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The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.  
 The issues to be heard shall be limited to the proposed rule.  
 ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

*Karen G. Watson*  
 Karen G. Watson, Attorney

*2806/13/13/99*

OTHER

NOTICE OF PUBLIC HEARING AND  
PUBLIC COMMENT PERIOD

On Monday, July 19, 1999 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on proposed revisions to the following legislative rules:

- 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"

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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"

Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.

Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.

Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan for the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval by the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan for the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34, the Office of Air Quality will seek federal delegation of authority from the U. S. Environmental Protection Agency to implement and enforce the revised standards.

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

Upon authorization and promulgation of revisions to 45CSR23, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.

Upon authorization and promulgation of revisions to 45CSR33, the Office of Air Quality will submit this rule to the U. S. Environmental Protection Agency as part of the State's Acid Program.

The hearing will be held in the Office of Air Quality's Conference Room located at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral comments by the public will be accepted until the close of the hearing on July 19th and will be made a part of the rulemaking record. Comments will not be accepted by e-mail. The public may also submit written comments by mail or other delivery to the Office of Air Quality through July 19th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief  
Office of Air Quality  
1558 Washington Street East  
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 18, 1999, at the Office of Air Quality's Charleston office.

## OTHER

### NOTICE OF PUBLIC HEARING

On Thursday, July 22, 1999 beginning at 7:00 p.m., the Office of Air Quality of the West Virginia Division of Environmental Protection (WVDEP) will hold a public hearing on proposed revisions to the State Implementation Plan (SIP) to attain and maintain compliance with the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO<sub>2</sub>). The proposed plan revisions affect American Electric Power's Kaunauer Plant, Columbian Chemical Company, PPG Industries, Inc. and Bayer Corporation, all of which are located in Marshall County, West Virginia.

The WVDEP proposes to enter Consent Orders with the aforementioned companies or, if necessary, seek modification to rule 45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides" to establish new sulfur dioxide emission limits or other requirements necessary to assure attainment of the sulfur dioxide NAAQS in Marshall County.

Upon entry of the proposed Consent Orders and/or promulgation of a revised 45CSR10, these documents, in conjunction with supporting documentation and analysis will be submitted to the United States Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act as amended.

The hearing will be held at the Grave Creek Mound Historical Site located at 801 Jefferson Avenue, Moundsville, WV 26041. Written and oral testimony by all interested parties will be accepted and made part of the record, which will be closed at the conclusion of the public hearing. Submittal of comments by electronic mail will not be accepted.

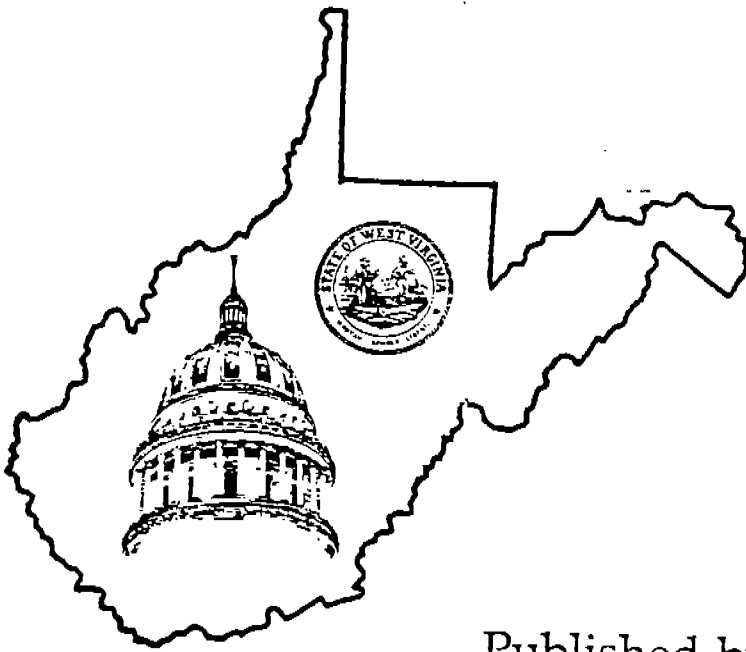
Persons interested in submitting written comments prior to the hearing should send them to:

Tim J. Carroll, Assistant Chief  
Office of Air Quality  
Northern Panhandle Regional Office  
1911 Warwick Avenue  
Wheeling, WV 26003

Copies of the draft Consent Orders and supporting documentation will be available for public review at the following locations on and after June 21, 1999:

Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311

# WEST VIRGINIA REGISTER



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*Pages 1242-1296*

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**CHRONOLOGICAL INDEX, VOLUME XVI ISSUE 28**

**PROPOSED RULES FILED FOR PUBLIC HEARING**

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Air Quality (45-16)	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60 Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-17)	To Prevent & Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage & Other Sources of Fugitive Particulate Matter Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-18)	To Prevent & Control Particulate Air Pollution from Direct Meat-Firing Devices Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-23)	To Prevent & Control Emissions from Municipal Solid Waste Landfills Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-33)	Acid Rain Provisions & Permits Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-34)	Emission Standards for Hazardous air Pollutants Pursuant to 40 CFR Part 63 Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above

**EMERGENCY RULES FILED**

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>EFFECTIVE DATE</u>	<u>DATE NOTICE FOR HEARING BY</u>
NO EMERGENCY RULES FILED THIS WEEK				

## RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC- ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-23)	To Prevent & Control Emissions From Municipal Solid Waste Landfills \$5.80 w/out federal reg's \$9.20 w/federal reg's Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999		8/3/1998	Modified & Amended 12/15/1998 Filed 1/5/1999	HB 2533	5/20/1999	6/1/1999
Air Quality (45-24)	To Prevent & Control Emissions From Hospital/Medical/Infectious Waste Incinerators \$4.20 Legislative	6/16/1998	7/21/1998						
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities \$9.80 w/out federal reg's \$12.00 w/federal reg's	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities \$7.00 Legislative	6/16/1998	7/21/1998		8/3/1998	Modified & Amended 12/15/1998 Filed 1/5/1999	HB 2533	5/20/1999	7/1/1999
Air Quality (45-28)	Air Pollutant Emissions Banking & Trading \$19.20 Legislative	12/2/1998	1/5/1999		2/1/1999				
Air Quality (45-33)	Acid Rain Provisions & Permits \$5.20 w/out federal reg's \$18.80 w/federal reg's	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-33)	Acid Rain Provisions & Permits \$2.40 Legislative	6/17/1998	7/21/1998		7/31/1998	Approved 12/15/1998	HB 2533	5/20/1999	6/1/1999
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63 \$5.40 w/out federal reg's \$47.00 w/federal reg's	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63 \$2.60 Legislative	6/16/1998	7/21/1998		7/31/1998	Modified & Approved 12/15/1998 Filed 1/5/1999	HB 2533	5/20/1999	6/1/1999
Alcohol Beverage Control Administration (175-1)	Retail Licensee Operations \$6.80 Legislative	7/7/1999	8/6/1999						

LEGISLATIVE

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION  
FORM #2  
July 28, 1999

WEST VIRGINIA  
SECRETARY OF STATE  
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ADMINISTRATIVE LAW DIVISION  
FORM #2  
July 28, 1999

Do Not Mark In This Box  
July 28, 1999

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--  
NOTICE OF EXTENSION OF COMMENT PERIOD

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45  
RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.  
AMENDMENT TO AN EXISTING RULE: YES X NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--  
NOTICE OF EXTENSION OF COMMENT PERIOD

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45  
RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.  
AMENDMENT TO AN EXISTING RULE: YES X NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 33

TITLE OF RULE BEING AMENDED: Acid Rain Provisions and Permits

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY  
INTERESTED PERSON MAY SEND COMMENTS CONCERNING THIS PROPOSED RULES. THIS COMMENT  
PERIOD WILL END ON July 28, 1999 AT 5:00 PM

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING  
ADDRESS

Edward L. Krapp, Chief  
Office of Air Quality  
1558 Washington Street East  
Charleston, WV 25311-2599

THE ISSUES TO BE HEARD SHALL BE  
LIMITED TO THIS PROPOSED RULE.

*Edward L. Krapp*

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY  
INTERESTED PERSON MAY SEND COMMENTS CONCERNING THIS PROPOSED RULES. THIS COMMENT  
PERIOD WILL END ON July 28, 1999 AT 5:00 PM

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING  
ADDRESS

Edward L. Krapp, Chief  
Office of Air Quality  
1558 Washington Street East  
Charleston, WV 25311-2599

THE ISSUES TO BE HEARD SHALL BE  
LIMITED TO THIS PROPOSED RULE.

*Edward L. Krapp*

OTHER

NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

The West Virginia Division of Environmental Protection, Office of Air Quality, hereby provides notice of the extension of the public comment period previously established for proposed revisions to the following legislative rules:

- 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"

- 45CSR21 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"
  - 45CSR31 "Acid Rain Provisions and Permits"
  - 45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"
- Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.
- Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.
- Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.
- Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.
- Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34, the Office of Air Quality will seek Federal delegation of authority from the U.S. Environmental Protection Agency to implement and enforce the revised standards.
- Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.
- Upon authorization and promulgation of revisions to 45CSR23, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.

Upon authorization and promulgation of revisions to 45CSR13, the rule will be submitted to the Environmental Protection Agency as part of the State's Acid Rain Program.



OTHER

The public comment period, previously set to expire at the close of the public hearing on July 19, 1999, will be extended up to and including July 28, 1999, at 5:00 p.m. to permit the receipt of written comments, which will be made a part of the rulemaking record. The public hearing set for July 19, 1999, at 6:00 p.m. will be held as previously noticed. Comments will not be accepted by e-mail. The public may submit written comments by mail or other delivery to the Office of Air Quality through July 28th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief  
Office of Air Quality  
1558 Washington Street East  
Charleston, WV 25311-2599

Copies of the proposed legislative rules are available for public review at the Office of Air Quality's Charleston office at the above address.



Stuart Rosen  
Senior Attorney

July 13, 1999

**BY OVERNIGHT MAIL**

Mr. Bill Harrington  
Office of the Secretary of State  
State Capitol Building  
157K  
Charleston, West Virginia 25305

Re: West Virginia Statutes, Section 47 2A-3(b)

Dear Mr. Harrington:

Pursuant to the provisions of the above statute, enclosed is a booklet containing BMI's music licensing agreements and related documents, along with a certification from our corporate secretary, which constitutes our current filing of such materials under the Act. This complete set of agreements should be substituted for the agreements filed last year.

I understand that there is no fee for filing these materials.

If you have any questions or comments about the enclosures, please feel free to contact me. In addition, I would appreciate your acknowledging receipt of this letter by signing and returning an extra copy in the enclosed envelope.

Very truly yours,

Stuart Rosen

RECEIVED: U.S. National Archives

**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

Kare G. Watson

45CSR25

RECEIVED

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

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,	CC	Organic Air Emission Standards for Tanks
		264.179, 265.178	I	Surface Impoundments,
		264.200, 265.202	J	and Containers
		264.232, 265.231	K	
		265	Appendix	Appendix VI

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

Final Rule

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Thursday  
January 21, 1999

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Part V

## Environmental Protection Agency

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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 Sophianopoloulos, 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 Mikuika, 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 TSDF owner has a production process that continuously generates a hazardous waste. Just prior to December 6, 1996, the effective date of the rule, the TSDF 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, TSDF, 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  $1.8 \times 10^{-6}$  atmospheres/gram-mole/ $m^3$ ] 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  $1.8 \times 10^{-6}$  atmospheres/gram-mole/m<sup>3</sup>] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (b)(3)(iii)(B) through (b)(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 (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.

\* \* \* \* \*

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

**§ 265.1085 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 § 265.1088 of this subpart.

\* \* \* \* \*

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.

\* \* \* \* \*

[FR Doc. 99-1335 Filed 1-20-99; 8:45 am]

BILLING CODE 6560-50-P

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

**ORIGINAL**

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 25 "To Prevent and Control Emissions from  
Municipal Solid Waste Landfills"

Transcript of proceedings had at a public hearing in the above-styled matter for the West Virginia Division of Environmental Protection, Office of Air Quality at the Conference Room, 1558 Washington Street, East, Charleston, West Virginia, 25305, commencing at 6:49 p.m. on the 19th day of July 1999, pursuant to notice.

---

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**P R O C E E D I N G S**

1  
2 MS. CHANDLER: Good evening. This public hearing  
3 will now come to order on this 19th day of July, 1999 at  
4 the West Virginia Division of Environmental Protection,  
5 Office of Air Quality's Conference Room located at 1558  
6 Washington Street, East, Charleston, West Virginia.

7 The purpose of the public hearing is to receive  
8 comments on the proposed rules filed in the Secretary of  
9 State's Office on June 16, 1999 and noticed in the State  
10 Register on June 18, 1999. The proposed legislative rules  
11 are 45 CSR 1, 45 CSR 2, 45 CSR 3, 45 CSR 4, 45 CSR 5, 45  
12 CSR 6, 45 CSR 7, 45 CSR 10, 45 CSR 12, 45 CSR 16, 45 CSR  
13 17, 45 CSR 18, 45 CSR 23, 45 CSR 25, 45 CSR 33 and 45 CSR  
14 34. The rules were noticed in a Class I legal  
15 advertisement in both The Charleston Daily Mail and The  
16 Charleston Gazette, and notice was also sent to various  
17 individuals and organizations.

18 This public hearing is being held pursuant to the  
19 provisions of 29A of the West Virginia Code and Section  
20 110 of the Clean Air Act.

21 My name is Jeanne Chandler of the Public Information  
22 Office of the West Virginia Division of Environmental  
23 Protection. I will be the moderator for these  
24 proceedings.

1           In order to obtain separate transcripts for each of  
2 the rules, the hearing procedure this evening will be to  
3 introduce each rule individually, allow time for oral  
4 comment and close the hearing for that particular rule.  
5 Written comments for any rule may be submitted at the end  
6 of this public hearing tonight. For those of you wishing  
7 to make oral comments, a sign-up sheet was provided and  
8 sign up now if you haven't already done so. Please limit  
9 your comments to five minutes. The comment period has  
10 been extended until July 28th until 5:00 p.m. Written  
11 comments may be sent to the attention of Edward L. Kropp,  
12 Chief, Office of Air Quality, 1558 Washington Street,  
13 East, Charleston, 25311. Comments will not be accepted by  
14 e-mail. Your comments will be made a part of the rule-  
15 making record.

16           The court reporter is Ms. Paula J. Moore. She's with  
17 Q & A Court Reporters, Incorporated. If anyone desires a  
18 transcript of this proceeding, please contact Ms. Moore at  
19 937-2555.

20           The purpose of this public hearing is to accept  
21 comments on 45 CSR 25, "To Prevent and Control Air  
22 Pollution from Hazardous Waste Treatment, Storage or  
23 Disposal Facilities." The current version of 45 CSR 25  
24 establishes a program of regulation over the treatment,

1 storage and disposal of hazardous wastes in order to  
2 achieve and maintain such levels of air quality as will  
3 protect the public health and safety and the environment  
4 from the effects of improper, inadequate or unsound  
5 treatment, storage or disposal of hazardous wastes.

6 The proposed rule changes are required to maintain  
7 consistency with the Office of Waste Management's current  
8 rule, 33 CSR 20, and with the current federal regulations.  
9 Amendment of this rule is sought to adopt by reference the  
10 definitions, clarifications and technical amendments for  
11 air emission standards for tanks, surface impoundments and  
12 containers published in the Federal Register on January  
13 21, 1999. The consistency of 45 CSR 25, 33 CSR 20 and  
14 federal rules is important for final authorization of the  
15 West Virginia State RCRA Hazardous Waste Management  
16 Program.

17 Upon authorization and promulgation of revisions to  
18 45 CSR 25, the rule will be submitted to the U.S.  
19 Environmental Protection Agency for approval as part of  
20 the State's Hazardous Waste Management Program.

21 The floor is now open for public comment. (No  
22 response.) There being nothing further, the public  
23 hearing for 45 CSR 25 is concluded.

24 (WHEREUPON, the hearing was

1

concluded at 6:50 p.m.)

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

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

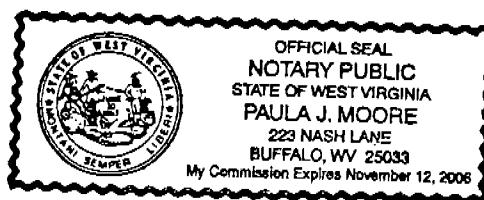
I, the undersigned, Paula J. Moore, a Certified Court Reporter and Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned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

Given under my hand and official seal this 27th day of July 1999.

*Paula J. Moore*

Certified Court Reporter  
Notary Public

My commission expires November 12, 2006.



# Division of Environmental Protection

6:00 PM

Public Hearing: OAQ Legislative Rules - 2000 Session Time/Date: July 19, 1999

COMMENT  
YES NO

ASCSL25

ADDRESS

NAME

NAME	ADDRESS	COMMENT YES NO
1. Sami Grapp Lewis - LW	9408 Venable Ave SE	
2. Tom O'Connell	HC 80 Bayard Road, Charleston WV	
3. Bill Hauer	AR 65 Box 42-A Lookout WV	
4. Fred Durham	1615 Washington St, East	✓
5. Ken Ward	Charleston Gazette 1001 Virginia St, E, City	✓
6. Dian Muth	WV MPO 1624 KANAWHA BLVD E. CHARLESTON, WV 25301	
7. LAURA QUINDEK	WV DEP C.A.G. 1555 Washington St E (Charleston, WV)	✓
8. EARL DUNINGSLEY	"	✓
9. Jesse Atkins	"	✓
10. Robert Keastley	"	✓
11. Karen Watson	" 1615 Washington St. E, Chas 25311	✓
12. JAMES KOTCOB	412-TYKONE-AVEAY ROAD, MORGANTOWN, WV 26505	
13. Dorell Bollivar	PO Box 68 Washington, WV 26180 GE Plastics	✓
14. Sam Nixon	WV DEP EAD 10 MacJunkin Rd, Nitro 25143	
15. John Benedict	WV DEP OAG CHARLESTON	✓



Division of Environmental Protection

6:00 pm

Public Hearing: OAQ Legislative Rules - 2000 Session Time/Date: July 19, 1999

COMMENT  
YES NO

48CSR25

NAME

ADDRESS

	NAME	ADDRESS	COMMENT YES	NO
1.	Jim McKeever	Box 144 Cranley, WV 24931		
2.	Joseph Robert	Box 66 Charleston WV 24931		
3.	Dick Wicker	PO Box 190 Clarksburg, WV 26302		X
4.	Kathy G. Beckett	PO Box 553, Charleston, WV 25322	X	
5.	Tim Mallon	301 Virginia St. E. Charleston, WV 25327	X	
6.	Sara F.	48CSR25		X
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029



Mr. Edward L. Kropp, Chief  
Office of Air Quality  
West Virginia Division of Environmental Protection  
1558 Washington Street, East  
Charleston, West Virginia 25311

July 1, 1999

Dear Skipp:

On June 28, 1999, we received your Notice of Public Hearing and Public Comment Period as well as copies of the proposed revisions to 16 rules which your office is proposing to adopt, effective the spring of 2000. Of these 16 proposed rules, we have determined that 14 of them may be impacted by current federal requirements. Therefore, we wish to review these proposed rules and provide your agency with any comments we may have for the public record. This allows your agency to make any agreed upon revisions to the proposed rules pursuant to our comments prior to their formal adoption. This would pave the way for expeditious approvals of these revised rules by EPA at the time of formal submittal.

However, given that we would have had only 14 working days until your scheduled date to close the public record, our office will not have time to perform the comprehensive review we normally provide to your agency. Therefore, I am requesting an extension of the date by which comments may be entered into the public record. If you could provide a 30-day extension we would be most appreciative, however, even a 15-day extension would be helpful. EPA would much prefer to identify any concerns we might have to your office while the State regulations are at the proposal stage, and work with you to resolve these concerns before West Virginia formally adopts and submits these regulations for federal approval.

I know you share my belief that our agencies should work together to avoid disapprovals and the uncertainties they pose to the regulated community and the public. Please let us know your decision as soon as possible by having your staff contact Harold Frankford at 215 814-2108.

Sincerely,

Marcia L. Spink, Associate Director  
Office of Air Programs  
Air Protection Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

		Date: 7/1/99
To	Skip Kropp	
Office	West Virginia DEQ, Office of Air Quality	
Phone Number	304/588-2496	
Fax Number	304/558-3287	
Subject	Request for Extension of Time to Submit Comments	
From	Marcia L Spink EPA PHONE: (215) 814-2104 FAX: (215) 814-2124	
NUMBER OF PAGES INCLUDING COVER SHEET <u>2</u>		
ORIGINAL TO BE SENT: Yes <u>      </u> No <u>      </u>		
MESSAGE: Request for extension of time to submit comments on West Virginia proposed air quality rules.		

Karee  
Laura  
Evel  
Rupe  
Bill M  
Wetton

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July 27, 1999

300 FOXCROFT AVENUE  
MARTINSBURG, WEST VIRGINIA 25401  
TELEPHONE 304-263-8800

256 RUSSELL AVENUE  
NEW MARTINSVILLE WEST VIRGINIA 26155  
TELEPHONE 304-455-1751

6090 HAMPTON CENTER  
MORGANTOWN, WEST VIRGINIA 26505  
TELEPHONE 304-599-3000

412 MARKET STREET  
PARKERSBURG, WEST VIRGINIA 26101  
TELEPHONE 304-424-3490

1000 TECHNOLOGY DRIVE  
FAIRMONT, WEST VIRGINIA 26554  
TELEPHONE 304-368-2000

1144 MARKET STREET  
WHEELING, WEST VIRGINIA 26003  
TELEPHONE 304-233-4000

1680 LINCOLN STREET  
DENVER COLORADO 80264  
TELEPHONE 303-390-0003

175 EAST MAIN STREET  
LEXINGTON, KENTUCKY 40585  
TELEPHONE 606-255-9500

2401 PENNSYLVANIA AVENUE N.W.  
WASHINGTON D.C. 20037  
TELEPHONE 202-973-0200

MEMBER OF LEX MUNDI  
THE WORLD'S LEADING ASSOCIATION  
OF INDEPENDENT LAW FIRMS

Edward L. Kropp, Chief  
Office of Air Quality  
WV Division of Environmental Protection  
1558 Washington Street, East  
Charleston, West Virginia 25311

Re: Proposed Modifications to 45 CSR  
1,2,3,4,5,6,7,10,16, 17, 18, 23, 25, 33, and  
34.

Dear Chief Kropp:

The West Virginia Chamber of Commerce ("Chamber") was a faithful participant in the Office of Air Quality ("OAQ") convened Stakeholder Regulatory Review Workgroup. From those meetings came a number of recommendations and suggestions that were presented to the OAQ for consideration in proposing revision to the West Virginia air quality regulatory program. The Chamber extends its compliments to the OAQ staff for the long hours it committed to this effort. The Chamber is supportive of the review process as a forum available to everyone to listen, learn, and draft proposed state air policy. The open exchange of concerns, ideas, and recommendations has resulted in a proposal package the genesis of which the participants can clearly understand. In some instances compromise was required. The Chamber supports this package of regulatory revisions in the spirit of compromise. These recommended proposals, as a whole, are appropriate and result in improvement in the state air quality program.

The following detailed comments are provided on behalf of the West Virginia Chamber of Commerce.

#### 45 CSR 2 - Particulate Emissions from Boilers

Section 3 Visible Emission Standards - The Chamber had urged consideration of modifications to the criteria for allowing an alternative visible emission standard. The Chamber supports the inclusion of the modifications to the regulation to make it more consistent with the six minute averaging of the rule and to meet the needs of the regulated community, without compromising the ultimate ambient air quality for particulates.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools, to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 2, the Chamber supports the regulatory revisions.

Section 8.4 addresses the potential need for the development of alternatives to the testing, monitoring and reporting requirements of the rule. The Chamber is supportive of the inclusion of this concept. The OAQ proposes to recognize unique operational characteristics that either make the implementation of Regulation 2, Section 8 impossible or unreasonable. This modification is evidence of the OAQ's commitment to work toward the development of a program that works with the regulated community to assure an effective air quality regulatory requirement. The Chamber applauds these and other similar efforts.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

#### **45 CSR 3 - Hot Mix Asphalt**

Regulation 3 had not undergone review since 1979. Many of the modifications to this regulation have been proposed to update and streamline the rule. The Chamber is supportive of the proposed changes.

Section 3.2 Start-up and Shut-down of Operations - During the Stakeholder Review Process, the Chamber had urged regulatory recognition of shut-down conditions, as has been done under the remainder of the OAQ regulatory program. The OAQ has proposed inclusion thereof. Again, the Chamber applauds the efforts of the OAQ to streamline the regulations and create consistency where possible.

#### **45 CSR 4 - Objectionable Odors**

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Section 4.1 Accidental and Other Infrequent Emissions, Reporting - The Chamber had advanced a concern about the need to create an affirmative obligation for the reporting of accidental or other infrequent emissions that was reasonable. The OAQ’s proposal both creates the obligation and clarifies that such a report is due upon the reasonable determination by a person that they are responsible for the objectionable odor. The Chamber is supportive of this language and believes its reasonableness standard complements other more stringent reporting obligations that are truly environmentally-based. The Chamber notes a typographical error where the last line of this regulation should read: “reasonably has knowledge of such discharge.”

Section 7 Enforcement - This language is written such that it fails to recognize the notification and investigation process described in Section 3 of this rule. The Chamber is supportive of the need for the OAQ to preserve its authority to exercise its enforcement authorities when the emission of air pollution is causing a violation of the WV Air Pollution Control Act. The Stakeholder Review Process invested significant resources in developing this rule. The Chamber presumes the OAQ intended for this language in Section 7 as a reservation of enforcement authority that would be invoked after reasonable efforts to implement Section 3 had failed.

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This regulation has been expanded to incorporate the current 45 CSR 1 which regulates coal refuse. In the interest of consolidating the air quality regulations that impact the coal industry, it was proposed that its requirements be combined with 45 CSR 5. The Chamber participated in the efforts to combine these regulations and complements the OAQ’s efforts to affect this combination as seamlessly as possible. This modification is consistent with the intent and purpose of the Stakeholder Review Process which was to revise and update.

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Section 10 Reports and Testing - The Chamber supports the proposed modifications to this section to emphasize the EPA test methods used by most operations. The proposal merely updates and refines the regulation without changing its effect.

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#### **45 CSR 7 - Particulate Emissions from Manufacturing Processes**

The Stakeholder Review Process devoted significant time to exploring the particulate emissions control program as set forth under Regulation 7. This is a complex rule that attempts to regulate a very diverse universe of manufacturing processes. This fact alone seriously complicates any effort to streamline and clarify its intent. The Chamber extends its compliments to the OAQ staff for its efforts during the Stakeholder discussions to explain the agency's needs with regard to this rule. The Chamber recommends for consideration the future need to review the merit of splitting Regulation 7 into several small regulations that are industry category specific. Such a split would significantly simplify the implementation and compliance with this rule.

Section 2.18 Maintenance Operations - The Chamber had proposed consideration by the Stakeholder Workgroup the need to recognize that certain maintenance operations result in emissions of particles that are not clearly defined under Regulation 7. This lack of clarity had resulted in inconsistent interpretation and enforcement. In response to that request, the OAQ has proposed a definition and a well defined exemption for certain maintenance operations that are not adversely impacting air quality under Section 10.3. The Chamber is supportive of these revisions as resulting in clarification of the regulation. These revisions recognize the fact that certain maintenance operations are insignificant and infrequent sources of particles not warranting extensive regulation, but instead warranting management through good engineering practices.

Section 2.39.d Type 'd' Manufacturing Processes - The Chamber had raise concerns over the need to clarify the scope of those manufacturing processes in which material of any origin undergoes a chemical change. In response to those comments, the OAQ has proposed the phrase "and this chemical change results in the emission of particulate matter to the atmosphere." The Chamber supports this change as one that serves to enhance the implementation of and compliance with this rule.

Section 3.7 Emissions from Storage Structures - The revisions to this section were intended by the Stakeholder Workgroup to be clarifying modifications to the requirement to control emissions from storage structures. The Chamber supports this revision as one that serves to streamline the requirement to control emissions from storage structures.

Section 5 - Control of Fugitive Particulate Matter - It was proposed by the Chamber that it would be appropriate to add language to expand the meaning of a fugitive particulate control system to include process equipment design, control equipment design or operation and maintenance procedures. These are important and effective alternatives that warranted recognition in the regulatory program. The OAQ has proposed inclusion of these alternatives confirming these fugitive control measures. The Chamber supports these modifications as enhancements to the meaning of the rule.

Section 10 - Alternative Visible Emission Standards - The Stakeholder Workgroup engaged in extensive discussions over the need to provide a similar process for demonstrating the need for an alternative visible emission standard for start-up and shutdowns as exists for sources of particles that are regulated from boilers. The results of those discussions are found in the proposed new section 10.4. The Chamber supports these recommended changes that create a process by which a manufacturing source operation is afforded the opportunity of demonstrating the need for an alternative standard that is protective of air quality.

Sections 10.5 and 10.6 Deminimus Sources of Particles - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of particles and mineral acids. Inclusion of these new sections is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 11 - Alternative Emission Limits for Duplicate Source Operations - The OAQ has proposed a section to address duplicate source operations that elect to petition for an alternative emission limit in response comments raised in the Stakeholder Review Process. It was recognized by the Stakeholder Review Workgroup that the issues surrounding the state "duplicate source" rule are very complex. The Chamber supports inclusion of this section that serves to create a review process for alternative emission limits for duplicate source operations. This provides an alternative to litigation which enhances regulatory efficiency.

The Chamber advocated for the removal of the "duplicate source" provisions as an archaic regulatory tool that has long since been rendered obsolete by the Clean Air Act Amendments and specifically by the NSR program. It is recommended that future modifications to Regulation 7 should focus on the need to eliminate these requirements.



## **45 CSR 10 - Sulfur Oxides**

Section 3.4.b. Individual Allowable Stack Emission Rates - The Chamber supports the OAQ's inclusion of provisions that would allow the agency to address those facilities with individual stack allowable emission rates differing from those calculated under the rule, based upon compliance with the criteria set forth in 3.4.b.1 through 3.4.b.6. This rule revision is evidence of the agency's interest in working with the regulated community to assure an implementable program that results in protection of air quality.

Section 4.1.e Deminimus Operations - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of sulfur oxides. Inclusion of this new section is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 10, the Chamber supports the regulatory revisions.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

Section 10.3 Exemptions - The Chamber supports the proposed exemption from the testing, monitoring, recordkeeping and reporting requirements for those operations that are known not to emit levels of sulfur oxides to warrant such requirements. These proposed modifications are clearly intended to streamline the regulation and provide for an appropriate level of regulation commensurate with the environmental impact.

## **45 CSR 17 - Fugitive Particulate Matter**

The proposed revisions to Regulation 17 were presented to the Stakeholder Review Workgroup by the OAQ. The OAQ expressed the need to have a regulatory tool that could be used to require management of fugitive emissions from sources that were not otherwise subject to the OAQ regulatory program. In recognition of that expressed need, it was agreed by the Stakeholder Workgroup that Regulation 17 should be significantly expanded. The

Chamber is supportive of these proposed changes that create a process by which sources would be contacted by the agency and efforts expended to develop a reasonable emissions control or suppression program.

#### **45 CSR 18 - Meat Firing**

The Stakeholder Workgoup discussed the history of the promulgation of the meat-firing regulation and concluded that this regulation was no longer warranted, based upon the fact that its provisions had not recently been invoked, implemented, or useful in an manner to the public, the agency or the potential regulated community. The Chamber supports the elimination of this regulation as clearly within the scope of updating the OAQ program.

Additional modifications have been proposed by the Office of Air Quality for the following regulations to make necessary and appropriate cross-references to the federal program. The Chamber is supportive of these modifications.

#### **45 CSR 16 - New Source Performance Standards**

#### **45 CSR 23 - Municipal Solid Waste Landfills**


#### **45 CSR 25 - Hazardous Waste Treatment, Storage, or Disposal Facilities**

#### **45 CSR 33 - Acid Rain**

#### **45 CSR 34 - Hazardous Air Pollutants**

In conclusion, the Chamber provided an oral statement at the hearing of July 19, 1999. In that statement the Chamber urged that a thorough Response to Comments be provided by the OAQ concerning the proposed rulemaking package that will explain the intent of the modifications as was agreed during the Stakeholder Review Process. This will serve to memorialize the changes that will be made to the regulations and provide guidance concerning the implementation of these changes.

Respectfully, submitted this 27th of July, 1999.

  
Kathy G. Beckett  
Counsel to the West Virginia Chamber  
of Commerce  
Jackson & Kelly, PLLC  
Post Office Box 553  
Charleston, West Virginia 25311  
(304) 340-1019  
(304) 340-1130 facsimile

**Public Hearing Statement of  
Kathy G. Beckett  
On Behalf of the West Virginia Chamber of Commerce  
July 19, 1999**

My name is Kathy G. Beckett, an attorney with the law firm of Jackson & Kelly PLLC. I am offering the following statement on behalf of the West Virginia Chamber of Commerce ("the Chamber") concerning the rulemaking package presented for comment by the Office of Air Quality addressing 45 CSR 1, 2, 3, 4, 5, 6, 7, 10, 12, 16, 17, 18, 23, 25, 33, and 34. Although the Chamber will be filing more detailed written comments concerning each of these rules by the filing deadline of July 28, 1999, it would like to offer the following general comments on this rulemaking package.

The Office of Air Quality ("OAQ") held a public meeting in Flatwoods, WV on November 17, 1998, where it announced its goal of updating and "harmonizing" OAQ's existing rules in time for submittal to the 2000 Legislature. It was announced that all rules were open for discussion and review. With that announcement began a rigorous schedule of meetings to begin the process of collecting comments and ideas about the need to update and streamline the state's air quality regulatory program. For those of you who attended the meetings, I do not have to tell you about the tireless commitment of time the OAQ staff devoted to managing the review process. Additional support from the stakeholder participants combined to create a very rich experience.

The Chamber is a strong supporter of the stakeholder review process. The model where a state administrative agency invites the public to engage in an honest, thoughtful, open and informal exchange of interests and ideas with the goal of proposing public policy is an excellent one. Those who attended and participated in the meetings that have taken place over the past several months were presented with an opportunity to inquire as to the

purpose of various provisions, question one another's needs, suggest solutions to issues, and propose language, all of which were presented to the Chief for his consideration." The more varied the vantage points of those engaged in the discussion the more creative the answer became. The Chamber applauds this process and encourages the agency and the public to look for other opportunities to engage in such an exercise.

As will be identified in the written comments filed on behalf of the Chamber, there is a very delicate balance that is created in the spirit of compromise. Some of the proposed modifications that were the subject of the review process represent concepts that meet the specific needs and concerns of certain stakeholders. Recognition of the needs of all stakeholders and balancing those needs against on another <sup>and the law</sup> is what the development of public policy is about. Great efforts were made during the discussions to blend the needs of the group into the recommended changes. The Chamber recommends that the OAQ to develop a thorough Response to Comments, as a means of recording the intent of the modifications that have been made.

What made this process work is the stated goal of streamlining and updating the program. Where appropriate, the OAQ has proposed incorporation of the updated federal air program. The OAQ has also proposed removal of provisions that are no longer useful. Although this package certainly represents progress, there remain antiquated regulatory concepts that we would all be well served to review again. Tossing away items from our past can be difficult, but the result could be a fresh, new, and efficient regulatory program.

Tonight the Chamber is participating in the next phase of the public review process by providing oral comments on the proposed regulatory changes that have been inspired, in part, by the recommendations of the stakeholders. The Chamber supports the stakeholder process and supports this rulemaking package.

4406 Venable Ave SE  
Charleston, WV 25304  
July 28, 1999

Jimmy  
Karen  
Linda  
Robert  
Evel

Karen

Edward L. Kropp  
Chief, Office of Air Quality  
West Virginia Division of Environmental Protection  
1558 Washington Street East  
Charleston, West Virginia 25311

Dear Mr. Kropp;

The following comments are in regard to the package of air quality proposed rules. While I represented the League of Women Voters in the stakeholder process, they are not the final or official word of the League, but are my own.


Having read all the proposed rules in one sitting, I am struck first by the amount of discretion given to the Director. I recognize that discretion and judgement are necessary to the effective enforcement of air quality regulations, but in 45CSR 3, section 5.4, the director has discretion to revoke the operating permit of a hot mix asphalt plant that did not maintain the requirements of the rule. Since the requirements are basic--no particulates beyond a certain standard, I believe that the rule should read, "shall revoke, unless good cause is shown by the permittee". Similar language should be used in the equivalent sections throughout this regulatory package. Giving wide latitude to the Director could provide a legal defense to favoritism, should a Director be so inclined.

I am similarly concerned about the lack of deadlines throughout the proposed rules. While it is clearly inappropriate to delineate rigid timelines, it is appropriate to expect that the agency will act expeditiously in its contacts with the regulated community and the public. It would strengthen the rules if such language was placed throughout the rules package where appropriate.

The process used by the Office of Air Quality in revising the rules is excellent. Bringing together the stakeholders to work together, and come to a common understanding, is a process that should be duplicated, not only within the Divisions of Environmental Protection, but throughout state government. I hope that as additional air quality rules are revised that the same process will be used. The rules are indeed improved by this process. I do support the proposed rule revisions and trust that they will be approved by both the Legislature and the EPA.

Thank you for making it possible for me and other citizens to participate in this important project. Inclusiveness made for a better product than earlier rule writing procedures.

Sincerely

  
Conni Gratop Lewis

## 45CSR25

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

#### RESPONSE TO COMMENTS

On July 19, 1999 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR25. Written comments were accepted through 5 PM on Wednesday July 28, 1999. Two persons commented at the public hearing concerning all of the OAQ's proposed rules. Both commenters were generally supportive of the proposed rules and the stakeholder process that was utilized by the OAQ to generate the proposed rules. In addition, these two commenters submitted written comments which the OAQ addresses below. One comment was received from the United States Environmental Protection Agency, Region III, requesting that the public comment period be extended. The OAQ responded to this comment by extending the comment period from July 19, 1999, to July 28, 1999.

#### I. COMMENTER: WV Chamber of Commerce

COMMENT: *This commenter stated it was supportive of the modifications to the rule.*

RESPONSE: No response required.

#### II. COMMENTER: Conni Gratop Lewis

COMMENT: *This commenter expressed concern about the lack of deadlines throughout all the proposed rules and believed the rules would be strengthened if such language was included where appropriate.*

RESPONSE: Since this rule largely incorporates by reference the provisions of the counterpart federal regulations, whatever deadlines exist in the federal counterpart regulations have been incorporated. OAQ believes this is sufficient.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029



Mr. Edward L. Kropp, Chief  
Office of Air Quality  
West Virginia Division of Environmental Protection  
1558 Washington Street, East  
Charleston, West Virginia 25311

July 1, 1999

Dear Skipp:

On June 28, 1999, we received your Notice of Public Hearing and Public Comment Period as well as copies of the proposed revisions to 16 rules which your office is proposing to adopt, effective the spring of 2000. Of these 16 proposed rules, we have determined that 14 of them may be impacted by current federal requirements. Therefore, we wish to review these proposed rules and provide your agency with any comments we may have for the public record. This allows your agency to make any agreed upon revisions to the proposed rules pursuant to our comments prior to their formal adoption. This would pave the way for expeditious approvals of these revised rules by EPA at the time of formal submittal.

However, given that we would have had only 14 working days until your scheduled date to close the public record, our office will not have time to perform the comprehensive review we normally provide to your agency. Therefore, I am requesting an extension of the date by which comments may be entered into the public record. If you could provide a 30-day extension we would be most appreciative, however, even a 15-day extension would be helpful. EPA would much prefer to identify any concerns we might have to your office while the State regulations are at the proposal stage, and work with you to resolve these concerns before West Virginia formally adopts and submits these regulations for federal approval.

I know you share my belief that our agencies should work together to avoid disapprovals and the uncertainties they pose to the regulated community and the public. Please let us know your decision as soon as possible by having your staff contact Harold Frankford at 215 814-2108.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marcia".

Marcia L. Spink, Associate Director  
Office of Air Programs  
Air Protection Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

Region III  
1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

		Date: 7/1/99
To	Skip Kropp	
Office	West Virginia DEQ, Office of Air Quality	
Phone Number	304/558-2496	
Fax Number	304/558-3287	
Subject	Request for Extension of Time to Submit Comments	
From	Marcia L Spink EPA PHONE: (215) 814-2104      FAX: (215) 814-2124	
NUMBER OF PAGES INCLUDING COVER SHEET <u>2</u>		
ORIGINAL TO BE SENT: Yes _____ No _____		
MESSAGE: Request for extension of time to submit comments on West Virginia proposed air quality rules.		



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July 27, 1999

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412 MARKET STREET  
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TELEPHONE 304-424-3490

1000 TECHNOLOGY DRIVE  
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TELEPHONE 606-255-9500

2401 PENNSYLVANIA AVENUE N.W.  
WASHINGTON, D.C. 20037  
TELEPHONE 202-973-0200

MEMBER OF LEX MUNDI,  
THE WORLD'S LEADING ASSOCIATION  
OF INDEPENDENT LAW FIRMS.

Edward L. Kropp, Chief  
Office of Air Quality  
WV Division of Environmental Protection  
1558 Washington Street, East  
Charleston, West Virginia 25311

Re: Proposed Modifications to 45 CSR  
1,2,3,4,5,6,7,10,16, 17, 18, 23, 25, 33, and  
34.

Dear Chief Kropp:

The West Virginia Chamber of Commerce ("Chamber") was a faithful participant in the Office of Air Quality ("OAQ") convened Stakeholder Regulatory Review Workgroup. From those meetings came a number of recommendations and suggestions that were presented to the OAQ for consideration in proposing revision to the West Virginia air quality regulatory program. The Chamber extends its compliments to the OAQ staff for the long hours it committed to this effort. The Chamber is supportive of the review process as a forum available to everyone to listen, learn, and draft proposed state air policy. The open exchange of concerns, ideas, and recommendations has resulted in a proposal package the genesis of which the participants can clearly understand. In some instances compromise was required. The Chamber supports this package of regulatory revisions in the spirit of compromise. These recommended proposals, as a whole, are appropriate and result in improvement in the state air quality program.

The following detailed comments are provided on behalf of the West Virginia Chamber of Commerce.

**45 CSR 2 - Particulate Emissions from Boilers**

Section 3 Visible Emission Standards - The Chamber had urged consideration of modifications to the criteria for allowing an alternative visible emission standard. The Chamber supports the inclusion of the modifications to the regulation to make it more consistent with the six minute averaging of the rule and to meet the needs of the regulated community, without compromising the ultimate ambient air quality for particulates.

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Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools, to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 2, the Chamber supports the regulatory revisions.

Section 8.4 addresses the potential need for the development of alternatives to the testing, monitoring and reporting requirements of the rule. The Chamber is supportive of the inclusion of this concept. The OAQ proposes to recognize unique operational characteristics that either make the implementation of Regulation 2, Section 8 impossible or unreasonable. This modification is evidence of the OAQ's commitment to work toward the development of a program that works with the regulated community to assure an effective air quality regulatory requirement. The Chamber applauds these and other similar efforts.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

#### **45 CSR 3 - Hot Mix Asphalt**

Regulation 3 had not undergone review since 1979. Many of the modifications to this regulation have been proposed to update and streamline the rule. The Chamber is supportive of the proposed changes.

Section 3.2 Start-up and Shut-down of Operations - During the Stakeholder Review Process, the Chamber had urged regulatory recognition of shut-down conditions, as has been done under the remainder of the OAQ regulatory program. The OAQ has proposed inclusion thereof. Again, the Chamber applauds the efforts of the OAQ to streamline the regulations and create consistency where possible.

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The Stakeholder Review Process devoted significant time to exploring the particulate emissions control program as set forth under Regulation 7. This is a complex rule that attempts to regulate a very diverse universe of manufacturing processes. This fact alone seriously complicates any effort to streamline and clarify its intent. The Chamber extends its compliments to the OAQ staff for its efforts during the Stakeholder discussions to explain the agency's needs with regard to this rule. The Chamber recommends for consideration the future need to review the merit of splitting Regulation 7 into several small regulations that are industry category specific. Such a split would significantly simplify the implementation and compliance with this rule.

Section 2.18 Maintenance Operations - The Chamber had proposed consideration by the Stakeholder Workgroup the need to recognize that certain maintenance operations result in emissions of particles that are not clearly defined under Regulation 7. This lack of clarity had resulted in inconsistent interpretation and enforcement. In response to that request, the OAQ has proposed a definition and a well defined exemption for certain maintenance operations that are not adversely impacting air quality under Section 10.3. The Chamber is supportive of these revisions as resulting in clarification of the regulation. These revisions recognize the fact that certain maintenance operations are insignificant and infrequent sources of particles not warranting extensive regulation, but instead warranting management through good engineering practices.

Section 2.39.d Type 'd' Manufacturing Processes - The Chamber had raise concerns over the need to clarify the scope of those manufacturing processes in which material of any origin undergoes a chemical change. In response to those comments, the OAQ has proposed the phrase “and this chemical change results in the emission of particulate matter to the atmosphere.” The Chamber supports this change as one that serves to enhance the implementation of and compliance with this rule.

Section 3.7 Emissions from Storage Structures - The revisions to this section were intended by the Stakeholder Workgroup to be clarifying modifications to the requirement to control emissions from storage structures. The Chamber supports this revision as one that serves to streamline the requirement to control emissions from storage structures.

Section 5 - Control of Fugitive Particulate Matter - It was proposed by the Chamber that it would be appropriate to add language to expand the meaning of a fugitive particulate control system to include process equipment design, control equipment design or operation and maintenance procedures. These are important and effective alternatives that warranted recognition in the regulatory program. The OAQ has proposed inclusion of these alternatives confirming these fugitive control measures. The Chamber supports these modifications as enhancements to the meaning of the rule.

Section 10 - Alternative Visible Emission Standards - The Stakeholder Workgroup engaged in extensive discussions over the need to provide a similar process for demonstrating the need for an alternative visible emission standard for start-up and shutdowns as exists for sources of particles that are regulated from boilers. The results of those discussions are found in the proposed new section 10.4. The Chamber supports these recommended changes that create a process by which a manufacturing source operation is afforded the opportunity of demonstrating the need for an alternative standard that is protective of air quality.

Sections 10.5 and 10.6 Deminimus Sources of Particles - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of particles and mineral acids. Inclusion of these new sections is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 11 - Alternative Emission Limits for Duplicate Source Operations - The OAQ has proposed a section to address duplicate source operations that elect to petition for an alternative emission limit in response comments raised in the Stakeholder Review Process. It was recognized by the Stakeholder Review Workgroup that the issues surrounding the state “duplicate source” rule are very complex. The Chamber supports inclusion of this section that serves to create a review process for alternative emission limits for duplicate source operations. This provides an alternative to litigation which enhances regulatory efficiency.

The Chamber advocated for the removal of the “duplicate source” provisions as an archaic regulatory tool that has long since been rendered obsolete by the Clean Air Act Amendments and specifically by the NSR program. It is recommended that future modifications to Regulation 7 should focus on the need to eliminate these requirements.

## **45 CSR 10 - Sulfur Oxides**

Section 3.4.b. Individual Allowable Stack Emission Rates - The Chamber supports the OAQ's inclusion of provisions that would allow the agency to address those facilities with individual stack allowable emission rates differing from those calculated under the rule, based upon compliance with the criteria set forth in 3.4.b.1 through 3.4.b.6. This rule revision is evidence of the agency's interest in working with the regulated community to assure an implementable program that results in protection of air quality.

Section 4.1.e Deminimus Operations - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of sulfur oxides. Inclusion of this new section is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 10, the Chamber supports the regulatory revisions.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

Section 10.3 Exemptions - The Chamber supports the proposed exemption from the testing, monitoring, recordkeeping and reporting requirements for those operations that are known not to emit levels of sulfur oxides to warrant such requirements. These proposed modifications are clearly intended to streamline the regulation and provide for an appropriate level of regulation commensurate with the environmental impact.

## **45 CSR 17 - Fugitive Particulate Matter**

The proposed revisions to Regulation 17 were presented to the Stakeholder Review Workgroup by the OAQ. The OAQ expressed the need to have a regulatory tool that could be used to require management of fugitive emissions from sources that were not otherwise subject to the OAQ regulatory program. In recognition of that expressed need, it was agreed by the Stakeholder Workgroup that Regulation 17 should be significantly expanded. The

Chamber is supportive of these proposed changes that create a process by which sources would be contacted by the agency and efforts expended to develop a reasonable emissions control or suppression program.

**45 CSR 18 - Meat Firing**

The Stakeholder Workgroup discussed the history of the promulgation of the meat-firing regulation and concluded that this regulation was no longer warranted, based upon the fact that its provisions had not recently been invoked, implemented, or useful in an manner to the public, the agency or the potential regulated community. The Chamber supports the elimination of this regulation as clearly within the scope of updating the OAQ program.

Additional modifications have been proposed by the Office of Air Quality for the following regulations to make necessary and appropriate cross-references to the federal program. The Chamber is supportive of these modifications.

**45 CSR 16 - New Source Performance Standards**

**45 CSR 23 - Municipal Solid Waste Landfills**


**45 CSR 25 - Hazardous Waste Treatment, Storage, or Disposal Facilities**

**45 CSR 33 - Acid Rain**

**45 CSR 34 - Hazardous Air Pollutants**

In conclusion, the Chamber provided an oral statement at the hearing of July 19, 1999. In that statement the Chamber urged that a thorough Response to Comments be provided by the OAQ concerning the proposed rulemaking package that will explain the intent of the modifications as was agreed during the Stakeholder Review Process. This will serve to memorialize the changes that will be made to the regulations and provide guidance concerning the implementation of these changes.

Respectfully, submitted this 27th of July, 1999.

  
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**Public Hearing Statement of  
Kathy G. Beckett  
On Behalf of the West Virginia Chamber of Commerce  
July 19, 1999**

My name is Kathy G. Beckett, an attorney with the law firm of Jackson & Kelly PLLC. I am offering the following statement on behalf of the West Virginia Chamber of Commerce ("the Chamber") concerning the rulemaking package presented for comment by the Office of Air Quality addressing 45 CSR 1, 2, 3, 4, 5, 6, 7, 10, 12, 16, 17, 18, 23, 25, 33, and 34. Although the Chamber will be filing more detailed written comments concerning each of these rules by the filing deadline of July 28, 1999, it would like to offer the following general comments on this rulemaking package.

The Office of Air Quality ("OAQ") held a public meeting in Flatwoods, WV on November 17, 1998, where it announced its goal of updating and "harmonizing" OAQ's existing rules in time for submittal to the 2000 Legislature. It was announced that all rules were open for discussion and review. With that announcement began a rigorous schedule of meetings to begin the process of collecting comments and ideas about the need to update and streamline the state's air quality regulatory program. For those of you who attended the meetings, I do not have to tell you about the tireless commitment of time the OAQ staff devoted to managing the review process. Additional support from the stakeholder participants combined to create a very rich experience.

The Chamber is a strong supporter of the stakeholder review process. The model where a state administrative agency invites the public to engage in an honest, thoughtful, open and informal exchange of interests and ideas with the goal of proposing public policy is an excellent one. Those who attended and participated in the meetings that have taken place over the past several months were presented with an opportunity to inquire as to the



purpose of various provisions, question one another's needs, suggest solutions to issues, and propose language, all of which were presented to the Chief for his consideration. The more varied the vantage points of those engaged in the discussion the more creative the answer became. The Chamber applauds this process and encourages the agency and the public to look for other opportunities to engage in such an exercise.

As will be identified in the written comments filed on behalf of the Chamber, there is a very delicate balance that is created in the spirit of compromise. Some of the proposed modifications that were the subject of the review process represent concepts that meet the specific needs and concerns of certain stakeholders. Recognition of the needs of all stakeholders and balancing those needs against <sup>and the law</sup> on another is what the development of public policy is about. Great efforts were made during the discussions to blend the needs of the group into the recommended changes. The Chamber recommends that the OAQ to develop a thorough Response to Comments, as a means of recording the intent of the modifications that have been made.

What made this process work is the stated goal of streamlining and updating the program. Where appropriate, the OAQ has proposed incorporation of the updated federal air program. The OAQ has also proposed removal of provisions that are no longer useful. Although this package certainly represents progress, there remain antiquated regulatory concepts that we would all be well served to review again. Tossing away items from our past can be difficult, but the result could be a fresh, new, and efficient regulatory program.

Tonight the Chamber is participating in the next phase of the public review process by providing oral comments on the proposed regulatory changes that have been inspired, in part, by the recommendations of the stakeholders. The Chamber supports the stakeholder process and supports this rulemaking package.

Jimmy  
Karen  
Linda  
Robert  
Evel

4406 Venable Ave SE  
Charleston, WV 25304  
July 28, 1999

Edward L. Kropp  
Chief, Office of Air Quality  
West Virginia Division of Environmental Protection  
1558 Washington Street East  
Charleston, West Virginia 25311

Dear Mr. Kropp;

The following comments are in regard to the package of air quality proposed rules. While I represented the League of Women Voters in the stakeholder process, they are not the final or official word of the League, but are my own.


Having read all the proposed rules in one sitting, I am struck first by the amount of discretion given to the Director. I recognize that discretion and judgement are necessary to the effective enforcement of air quality regulations, but in 45CSR 3, section 5.4, the director has discretion to revoke the operating permit of a hot mix asphalt plant that did not maintain the requirements of the rule. Since the requirements are basic--no particulates beyond a certain standard, I believe that the rule should read, "shall revoke, unless good cause is shown by the permittee". Similar language should be used in the equivalent sections throughout this regulatory package. Giving wide latitude to the Director could provide a legal defense to favoritism, should a Director be so inclined.

I am similarly concerned about the lack of deadlines throughout the proposed rules. While it is clearly inappropriate to delineate rigid timelines, it is appropriate to expect that the agency will act expeditiously in its contacts with the regulated community and the public. It would strengthen the rules if such language was placed throughout the rules package where appropriate.

The process used by the Office of Air Quality in revising the rules is excellent. Bringing together the stakeholders to work together, and come to a common understanding, is a process that should be duplicated, not only within the Divisions of Environmental Protection, but throughout state government. I hope that as additional air quality rules are revised that the same process will be used. The rules are indeed improved by this process. I do support the proposed rule revisions and trust that they will be approved by both the Legislature and the EPA.

Thank you for making it possible for me and other citizens to participate in this important project. Inclusiveness made for a better product than earlier rule writing procedures.

Sincerely

  
Conni Gratop Lewis

## 45CSR25

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

#### RESPONSE TO COMMENTS

On July 19, 1999 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR25. Written comments were accepted through 5 PM on Wednesday July 28, 1999. Two persons commented at the public hearing concerning all of the OAQ's proposed rules. Both commenters were generally supportive of the proposed rules and the stakeholder process that was utilized by the OAQ to generate the proposed rules. In addition, these two commenters submitted written comments which the OAQ addresses below. One comment was received from the United States Environmental Protection Agency, Region III, requesting that the public comment period be extended. The OAQ responded to this comment by extending the comment period from July 19, 1999, to July 28, 1999.

#### I. COMMENTER: WV Chamber of Commerce

COMMENT: *This commenter stated it was supportive of the modifications to the rule.*

RESPONSE: No response required.

#### II. COMMENTER: Conni Gratop Lewis

COMMENT: *This commenter expressed concern about the lack of deadlines throughout all the proposed rules and believed the rules would be strengthened if such language was included where appropriate.*

RESPONSE: Since this rule largely incorporates by reference the provisions of the counterpart federal regulations, whatever deadlines exist in the federal counterpart regulations have been incorporated. OAQ believes this is sufficient.