



**LEGISLATIVE HISTORY ABSTRACT**  
**45CSR25**

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

Bureau of Environment  
Division of Environmental Protection  
Office of Air Quality  
House Bill 2134, Section 64-3-1(g)

- 07/06/94      Filed Notice of Public Hearing with Secretary of State.
- 07/06/94      Initial Filing with Legislative Rule-Making Review Committee.
- 07/29/94      Held Public Hearing.
- 08/09/94      End of Public Comment Period.
- 08/12/94      Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
- 01/09/95      Hearing Before the Legislative Rule-Making Review Committee.
- 01/09/95      Rule Approved by Legislative Rule-Making Review Committee with Modifications.
- 01/11/95      Legislative Rule-Making Review Committee Recommends that the Legislature Authorize the Agency to Promulgate 45CSR25 as Modified.
- 01/12/95      Modified Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
- 03/10/95      Passed the West Virginia Legislature.
- 03/24/95      Approved by the Governor.
- 04/30/95      Rule Final Filed with Secretary of State.
- 05/01/95      Effective Date of Rule.

45CSR25

TITLE 45  
LEGISLATIVE RULES  
~~WEST-VIRGINIA-AIR-POLLUTION-CONTROL-COMMISSION~~  
BUREAU OF ENVIRONMENT  
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.

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.

b. The requirements of this rule apply to all owners and operators of hazardous waste treatment, storage, and disposal facilities, including but not limited to:

A. Generators accumulating hazardous waste on-site for periods of less than ninety (90) days;

B. Owners and operators of wastewater treatment units as defined in this rule; and

C. Owners and operators which burn hazardous wastes in incinerator, boilers and industrial furnaces in order to destroy the wastes.

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.

ed. This rule is promulgated pursuant to W. Va. Code ~~§20-5E-1~~ §22-18-1; et seq., and ~~§16-20-1~~ §22-5-1; et seq. Recognizing that each Chapter has its own enforcement sections, it is the intent of the ~~Commission~~ Director that enforcement shall be implemented in accordance with W. Va. Code ~~§20-5E-1~~ §22-18-1;

~~et seq., where practicable. - The Chief shall retain all powers conferred by W. Va. Code §20-5E-1, et seq.; and §16-20-1, et seq.; and the rules of the Commission or the Division of Environmental Protection and shall exercise such powers as necessary.~~

de. 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., and this rule.

1.2. Authority -- ~~W.Va. Code §16-20-5 and §20-5E-7(e). §§22-5-1 et seq. and §§22-18-1 et seq.~~

1.3. Filing Date -- ~~August 13, 1993.~~

1.4. Effective Date -- ~~April 27, 1994.~~

1.5. ~~Former Rule. --- This legislative rule amends and replaces 45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities" which became effective July 14, 1989. Incorporation By Reference.~~

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, 1994.

b. This rule also incorporates by reference the provisions contained in 47CSR35, effective July 1, 1994.

**§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' shall have the meaning ascribed to it in W. Va. Code ~~§16-20-222-5-2, as amended.~~

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 ~~Chief~~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 Chief 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---"Boiler" means an enclosed device using controlled flame combustion which the Chief has determined, on case-by-case basis, to be a boiler, after considering the standards in subsection 3.4.3 of 47 CSR 35, or which has the following characteristics:

a----The unit must have physical provisions for recording and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

b----The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and primary energy recovery section(s). The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

c----While in operation, the unit must maintain a thermal energy efficiency of at least sixty percent (60%), calculated in terms of the recovered energy compared with the thermal value of the fuel; and

d----The unit must export and utilize at least seventy-five percent (75%) of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans of feedwater pumps):

2-6---"Carbon Regeneration Unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

2-7---"Certification" means a statement of professional opinion based upon knowledge and belief.

~~2.87--"Chief"--means the Chief of the West Virginia Office of Air Quality, Division of Environmental Protection.~~

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

~~2.10--"Constituents" or "Hazardous Waste Constituent" means a constituent identified in Appendix VIII of section 3 of 47 CSR 35 or constituents that caused the DEP Director to list the waste as hazardous in section 3 of 47 CSR 35 or constituents listed in Table II of subsection 3.3.5 of 47 CSR 35.~~

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

2.127. "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.

2.128. "Director" means the Director of the West Virginia Division of Environmental Protection or his or her designated representative.

2.139. "Division of Environmental Protection or DEP" means that Division of the Department of Commerce, Labor and Environmental Resources which is created by the provisions of West Virginia W. Va. Code §§22-1-1; et seq.

2.1410. "EPA" means the United States Environmental Protection Agency.

~~2.15--"Hazardous Waste Management Facility"; "facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing or disposing of hazardous wastes. A facility may consist of several treatment, storage or disposal operational units.~~

~~2.16--"Hazardous Waste Management Unit" means a contiguous area of land on or in which hazardous waste is placed or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment; a waste pile; a land treatment area; a landfill cell; an incinerator; a tank (including its associated piping and underlying containment system); and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.~~

~~2.17--"Incinerator" means any enclosed device that:~~

~~a.----Uses controlled flame combustion and does not meet the criteria for classification as a boiler; sludge dryer; carbon reactivation unit; nor listed as an industrial furnace; or~~

b.----Meets the definition of infrared incinerator or plasma-arc incinerator.

2.18. "Industrial Furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- a.----Cement kilns;
- b.----Lime kilns;
- c.----Aggregate kilns;
- d.----Phosphate kilns;
- e.----Coke ovens;
- f.----Blast furnaces;
- g.----Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);
- h.----Titanium dioxide chloride process oxidation reactors;
- i.----Methane reforming furnaces;
- j.----Pulping liquor recovery furnaces;
- k.----Combustion devices used in the recovery of sulfur values from spent sulfuric acid;
- l.----Halogen acid furnaces (HAF's) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated.
- m.----Such other devices as the Commission or Chief of the Office of Air Quality may, after notice and comment, add to the list on the basis of one or more of the following factors:

A.----The design and use of the device primarily to accomplish recovery of material products;

B.----The use of the device to burn or reduce raw materials to make a material product;

C.----The use of device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

D.----The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

E.----The use of the device in common industrial practice to produce a material product; and

F.----Other factors, as appropriate.

2.1911. "Infectious Medical Waste" shall have the meaning ascribed to it in 64 CSR 56 "Infectious Medical Waste", (June 11, 1993), promulgated by the Division of Health.

~~2.20. "Infrared Incinerator" means any enclosed device that uses electrical powered resistance heaters as a source of radiant heat and which is not listed as an industrial furnace.~~

~~2.21. "Manufacturing or Mining By-Product" means a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time.~~

~~2.22. "Miscellaneous Unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR 146, or unit eligible for a research, development, and demonstration permit under 40 CFR 270.65.~~

~~2.23. "Open Burning" means the combustion, or partial combustion, of any material without the following characteristics:~~

~~a. Control of combustion air to maintain adequate temperature for efficient combustion;~~

~~b. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and~~

~~c. Control of emissions of the gaseous combustion products. (See also "incinerator" and "thermal treatment").~~

~~2.24. "Operator" means the person responsible for the overall operation of a facility.~~

~~2.25. "Owner" means the person who owns a facility or part of a facility.~~

2.2612. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.2713. "Pathological Incinerator" means an incinerator used to thermally treat infectious medical waste. Note: The owner or operator of a pathological waste incinerator is not subject to the requirements of this regulation. However, such pathological waste incinerator must be designed, constructed, and operated to meet all other applicable regulations promulgated by the ~~Air Pollution Control Commission~~ Director including, but not limited to, 45CSR6 and 45CSR13.

2.28.-"Plasma-Arc-Incinerator"-means-any-enclosed-device-using-a-high-intensity-electrical-discharge-or-arc-as-a-source-of-heat-and-which-is-not-listed-as-an-industrial-furnace-

2.2914. "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.

2.30.-"Sludge-Dryer"-means-any-enclosed-thermal-treatment-device-that-is-used-to-dehydrate-sludge-and-that-has-a-maximum-total-thermal-input,-excluding-the-heating-value-of-the-sludge-itself,-of-2,500-BTU/lb-of-sludge-treated-on-a-wet-weight-basis-

2.3115. "Steady State" means that all conditions at all points in the thermal treatment process are in stable, normal operating conditions.

2.32.-"Tank"-means-a-stationary-device-designed-to-contain-an-accumulation-of-hazardous-waste-which-is-constructed-primarily-of-non-earthen-materials-(e.g.-concrete,-wood,-steel,-plastic)-which-provide-structural-support-

2.33.-"Thermal Treatment"-means-the-treatment-of-hazardous-waste-in-a-device-which-uses-elevated-temperatures-as-the-primary-means-to-change-the-chemical,-physical,-or-biological-character-or-composition-of-the-hazardous-waste.-Examples-of-thermal-treatment-processes-are-incineration,-molten-salt,-pyrolysis,-calcination,-wet-air-oxidation,-and-microwave-discharge.--(See-also-"Incinerator"-and-"Open Burning").

2.34.-"Totally-Enclosed-Treatment-Facility"-means-a-facility-for-the-treatment-of-hazardous-waste-which-is-directly-connected-to-an-industrial-production-process-and-which-is-constructed-and-operated-in-a-manner-which-prevents-release-of-any-hazardous-waste-or-any-constituent-thereof-into-the-environment-during-treatment-

2.35.-"Treatment"-means-any-method,-technique,-or-process-including-neutralization,-designed-to-change-the-physical,-chemical,-or-biological-character-or-composition-of-any-hazardous-waste-so-as-to-neutralize-such-waste,-or-so-as-to-recover-energy-or-material-resources-from-the-waste,-or-so-as-to-render-such-waste-nonhazardous,-or-less-hazardous,-safer-to-transport,-store,-or-dispose-of,-or-amenable-for-recovery,-amenable-for-storage,-or-reduced-in-volume.--Such-term-includes-any-activity-or-process-designed-to-change-the-physical-form-or-chemical-composition-of-hazardous-waste-so-as-to-render-it-nonhazardous-

2.36.-"Waste"-shall-have-the-same-meaning-ascribed-in-subsection-3-1-2-of-47-CSR-35-

2.37.-"Wastewater-Treatment-Unit"-means-a-device-which+

a.----Is-part-of-a-wastewater-treatment-facility-which-is-subject-to-regulation-under-either-Section-402-or-307-(b)-of-the-Clean-Water-Act;

~~b.----Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 47-CSR 35, or generates and accumulates, or treats or stores a wastewater treatment sludge that is defined as a hazardous waste;~~

~~e.----Meets the definition of a tank as defined in Section 2 of this rule.~~

2.3816. All other words or phrases not herein defined and used in this rule shall have the meaning as ascribed in W. Va. Code ~~16-20-1~~; ~~§§22-5-1~~ et seq., or W. Va. Code ~~20-5E-1~~; ~~§§22-18-1~~ et seq., or 47 CSR 35 "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 47 CSR 35 "Hazardous Waste Management Regulations", effective ~~August 9, 1993~~ July 1, 1994 are hereby adopted by reference.

a. ~~In making a determination of whether a material is a waste, and if so, whether that material is a hazardous waste, the chief of the office of waste management shall consult with the chief of the office of air quality in making such determination.~~ 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. The provisions contained in the Code of Federal Regulations (~~1991~~ July 1, 1994), as listed in Table 25-A, are hereby adopted by reference, with the following modifications:

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

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 ~~Chief of the Office of Air Quality~~ Director of the West Virginia Division of Environmental Protection.

c. Whenever the term "Environmental Protection Agency" is used in 40 CFR 266, the term also means the West Virginia Division of Environmental Protection, ~~Office of Air Quality~~.

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. ~~The requirements of this rule apply to all owners and operators of hazardous waste treatment, storage, and disposal facilities, including but not limited to:~~

~~a.-----Generators accumulating hazardous waste on-site for periods of less than ninety (90) days;--~~

~~b.-----Owners and operators of wastewater treatment units as defined in this rule; and~~

~~e.-----Owners--and--operators--which--burn--hazardous--wastes--in incinerator, boilers and industrial furnaces in order to destroy the wastes.~~

4.2. Owners and operators of hazardous waste management 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:

a. Hazardous Waste Management Program under RCRA and 47 CSR 35;

b. Prevention of Significant Deterioration (PSD) pProgram under 45CSR14 or the Federal Clean Air Act;

c. Nonattainment program under West Virginia DEP, Office of Air Quality or the Federal Clean Air Act and 45CSR19;

d. National Emission Standards for Hazardous Pollutants (NESHAP) preconstruction approval under 45CSR15 or the Federal Clean Air Act;

e. Standards of Performance for New Stationary Sources under 45CSR16 or the Federal Clean Air Act; and

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

4.32. Owners and operators of hazardous waste management facilities treatment, storage and disposal facilities covered under this rule shall comply with the personnel training requirements as specified by Subsection 8-2-7 of 47-CSR-35-40 CFR 264.16. An outline of the training program required by Subsection 8-2-7 of 47-CSR-35 and a description of how the training program is designed to meet actual job tasks must be submitted to the Chief Director with Part B of the permit application.

4.43. Owners and operators of hazardous waste tanks, surface impoundments, landfills, waste piles, land treatment, 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.

4.54. 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:

- a. Produce uncontrolled toxic mists, fumes, dust or gases in sufficient quantities to threaten human health or the environment, and
- b. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion.

4.65. Owners and operators of all hazardous waste tanks shall have treatment process controls, emission controls, and safety or emergency procedures as are necessary to protect human health and the environment from toxic or otherwise harmful fumes, mists, or gases resulting from:

- a. Volatilization of wastes stored or treated in the tank;
- b. Chemical reactions in the tank, either routine or resulting from process upsets; and
- c. Physical agitation or other forms of treatment in the tank.

4.76. Tanks used to treat or store hazardous waste containing liquid waste whose true vapor pressure is greater than 10.5 ~~kilo-Pascals~~kilopascals (1.52 psia) at 25°C and 760 mmHg shall be equipped with an emission control system meeting the following requirements:

- a. Storage or treatment in open (uncovered) tanks is prohibited.
- b. External floating roofs shall be equipped with double mechanical seals.
- c. Fixed roof tanks shall be equipped with an internal floating roof with appropriate seals, a vapor recovery system, or an equally effective alternative emission control system approved by the Chief Director.

4.87. Emissions of hazardous waste whose true vapor pressure is greater than 10.5 ~~kilo-Pascals~~kilopascals (1.52 psia) at 25°C, 760 mmHg shall be controlled during loading or unloading of tank trucks, railroad tank cars, and barges by the methods listed as follows:

a. Venting all displaced vapors and gases to a vapor recovery system or an alternative emission control system approved by the Chief Director;

b. Providing a means to prevent liquid drainage from the loading (unloading) device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and

c. Equipping all loading and vapor lines with fittings which make vapor tight connections that close automatically when disconnected.

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

4.109. Hazardous waste landfills must be covered or otherwise managed to prevent wind dispersal of the waste.

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

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

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

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

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

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

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

4.121. 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:

a. Process turn-arounds;

b. Cleaning of process equipment;

c. Planned process shutdowns; and

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

4.132. a. The Chief 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 Chief Director may require the following data from the permit applicant:

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

- (a) Mass emission rates from the stack, and
- (b) Concentration in the gas stream exiting the stack; and

B. Air dispersion estimates for those substances, including:

- (a) Meteorological data, and
- (b) Description of the air dispersion models, and
- (c) Assumptions underlying the air dispersion models

used; and

C. Expected human and environmental exposure, including:

- (a) Topographic considerations,
- (b) Population distributions,
- (c) Population activities, and
- (d) Modes, intensity, and duration of exposure; and

D. Consequences of exposure, including:

- (a) Dose-response curves for carcinogens,
- (b) Health effects based on human or animal studies for other toxic constituents,
- (c) Potential for accumulation of toxic constituents in the human body, and
- (d) Statements of expected risk to individuals or populations.

4.143. Emergency Permit. Notwithstanding any other provision in ~~Section 11 of 47 CSR 3540~~ CFR 270.61, in the event the Chief Director finds an imminent and substantial danger to human health or the environment, the Chief 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:

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

- b. Shall not exceed ninety (90) days in duration;
- c. Shall clearly specify the hazardous wastes to be received, and the manner and location of the treatment, storage, or disposal;
- d. May be terminated by the Chief Director at any time without prior notice if it is determined that termination is appropriate to protect human health or the environment; and
- e. Shall be accompanied by public notice ~~which shall be published by the permittee~~ as described under Section 7 of this rule and shall include the following:
  - A. Name and address of the office granting the emergency authorization,
  - B. Name and location of the permitted hazardous waste management facility,
  - C. A brief description of the wastes involved,
  - D. A brief description of the action authorized and reasons for authorizing it,
  - E. Duration of the emergency permit; and
- f. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this rule.

**§45-25-5. Exclusion and Exemptions.**

5.1. Wastes and/or materials excluded in ~~Section 3-1-4 of~~ 47 CSR 35, are also excluded from the requirements of this rule, except that mixtures of domestic or industrial sewage and hazardous wastes which pass through a sewer system to a privately owned or publicly owned treatment works are subject to the requirements of this rule.

~~5.2. Except for those wastes identified in Sections 10.2.5, 10.2.7 and 10.2.10 of 47 CSR 35, a conditionally exempt small quantity generator's wastes as defined by Section 10.2.1 of 47 CSR 35 are not subject to the requirements of this rule provided that the generator complies with Section 10.2.6, 10.2.7 and 10.2.10 of 47 CSR 35.~~

5.32. Except for recyclable materials exempt pursuant to Section 3-1-6 of 47 CSR 35, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of Section 4.

**§45-25-6. Confidential Information.**

6.1. Any records, reports, or information and any permit, permit applications, and related documents within the Chief's Director's possession shall be available to the public for inspection and copying: provided, however, that upon satisfactory showing to the Chief Director that such records, reports, permit documentation, or information, or any part thereof would, if made public, divulge methods or processes, or activities, entitled to protection as trade secrets, the Chief Director shall consider, treat, and protect such records as confidential pursuant to W. Va. Code ~~§20-5E-1~~ §22-18-1; et seq., and ~~§16-20-1~~ §22-5-1; et seq.

**§45-25-7. Public Notice.**

Public notice of the preparation of a draft permit shall be given by the methods contained in 47 CSR 35 Section ~~11-2412~~, ~~except that the owner or operator shall place a Class 1-0 legal advertisement in two (2) newspapers of general circulation in the county where the source is located. In addition, the applicant shall have such notice broadcast over local radio stations. Upon publication and broadcasting, the applicant shall send the Chief a copy of the certificate of publication and confirmation of broadcasting.~~

**§45-25-8. Application Fees.**

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

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	\$2,500
b. Major Modifications or Renewals of Permits for Hazardous Waste Management Facilities	\$1,000

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

**§45-25-9. Inconsistency Between Rules.**

In the event of any inconsistency between this rule and any other rule of the ~~Commission or 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

CFR No.	Part No.	Subpart No.	Title
40 CFR	264, 265	O	Incinerator
	270.19	B	Specific Requirements for Incinerators
	270.62	F	Hazardous Waste Incinerator Permits
40 CFR	264	X	Miscellaneous Units
	270.23	B	Specific Requirements for Miscellaneous Units
40 CFR	264, 265	AA	Air Emission Standards for Process Vents
	270.24	B	Specific Requirements for Process Vents
40 CFR	264, 265	BB	Air Emission Standards for Equipment Leaks
	270.25	B	Specific Requirements for Equipments <u>Leaks</u>
40 CFR	265	P	Thermal Treatment
40 CFR	266	H	Hazardous Waste Burned in Boilers and Industrial Furnaces
	270.22	B	Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
	270.66	F	Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
40 CFR	<del>266</del> 279.23	<del>DC</del>	<del>Hazardous Waste Burned for Energy Recovery On-site Burning In Space Heater</del>
	<u>279.61</u> <u>279.63</u>	<u>G</u>	<u>Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery</u>
	<del>266</del>	<del>E</del>	<del>Used Oil Burned for Energy Recovery</del>

Bill-DEP, Hazardous Waste

2163

45-25

H. B. 2163

(By Delegates Gallagher, Douglas, Compton,  
Linch, Faircloth and Riggs )

(Introduced January 23, 1995 ; referred to the  
Committee on the Judiciary .)

A BILL to amend chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-b, relating to authorizing the division of environmental protection to promulgate legislative rules relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities.

*Be it enacted by the Legislature of West Virginia:*

That chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-b, to read as follows:

**ARTICLE 3B. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.**

**§64-3B-1. Division of environmental protection.**

The legislative rules filed in the state register on the thirteenth day of September one thousand nine hundred ninety-four, modified by the division of environmental protection to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the twelfth day of January, one  
3 thousand nine hundred ninety-five, relating to the division of  
4 environmental protection (to prevent and control air pollution from  
5 hazardous waste treatment, storage or disposal facilities), are  
6 authorized.

7  
8 NOTE: The purpose of this bill is to authorize the Division  
9 of Environmental Protection to promulgate legislative rules  
10 relating to the prevention and control of air pollution from  
11 hazardous waste treatment, storage or disposal facilities.  
12

13 This section is new; therefore, strike-throughs and  
14 underscoring have been omitted.  
15

SENATE BILL NO. 73

(By Senators Anderson, Boley, Grubb and Macnaughtan)

[Introduced January 20, 1995; referred to the  
Committee on Natural Resources; then to the  
Committee on Finance and then to the Committee  
on the Judiciary]

45-25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10 A BILL to amend chapter sixty-four of the code of West Virginia,  
11 one thousand nine hundred thirty-one, as amended, by adding  
12 thereto a new article, designated article three-b, relating to  
13 authorizing the division of environmental protection to  
14 promulgate legislative rules relating to the prevention and  
15 control of air pollution from hazardous waste treatment,  
16 storage or disposal facilities.

17 *Be it enacted by the Legislature of West Virginia:*

18 That chapter sixty-four of the code of West Virginia, one  
19 thousand nine hundred thirty-one, as amended, be amended by adding  
20 thereto a new article, designated article three-b, to read as  
21 follows:

22 **ARTICLE 3B. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE**  
23 **LEGISLATIVE RULES.**

24 **§64-3B-1. Division of environmental protection.**

25 The legislative rules filed in the state register on the  
26 thirteenth day of September one thousand nine hundred ninety-four,  
27 modified by the division of environmental protection to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the twelfth day of January, one  
3 thousand nine hundred ninety-five, relating to the division of  
4 environmental protection (to prevent and control air pollution from  
5 hazardous waste treatment, storage or disposal facilities), are  
6 authorized.

7  
8 NOTE: The purpose of this bill is to authorize the Division  
9 of Environmental Protection to promulgate legislative rules  
10 relating to the prevention and control of air pollution from  
11 hazardous waste treatment, storage or disposal facilities.

12  
13 This section is new; therefore, strike-throughs and  
14 underscoring have been omitted.  
15

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 558-6000  
Corporations: (304) 558-8000



## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

--- Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

FAX: (304) 558-0900

March 29, 1995

Tammy Mowrer  
DEP-Air Quality  
1558 Washington St. E.  
Charleston, WV 25311

**HB 2134 authorizing, Title 45, Series 25, To prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, passed the Legislature on March 10, 1995. It is was signed by the Governor on March 24, 1995.**

You have sixty (60) days after the Governor signs HB 2134, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 2134** section **64-3-1(g)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

**\*\*\*IMPORTANT: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You  
Administrative Law Division



**BUREAU OF ENVIRONMENT**

10 McJUNKIN ROAD  
NITRO, WV 25143-2506

GASTON CAPERTON  
GOVERNOR

DAVID C. CALLAGHAN  
COMMISSIONER

January 11, 1995

Ms. Judy Cooper  
Director, Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
Charleston, West Virginia 25305

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

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned rule as a modification to a proposed rule with your Office and Legislative Rule-Making.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Roger T. Hall at 759-0515.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "D. Callaghan", written over the typed name.

David C. Callaghan  
Commissioner  
Bureau of Environment

DCC;RTH:cc

Attachment

OFFICE OF THE SECRETARY OF STATE

JAN 12 11 15 AM '95

FILED

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

STEPHEN N. REED  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900



WV DIV OF ENVIRONMENT PROTECT.  
OFFICE OF AIR QUALITY

175 OCT 17 P 1:07

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

PENNEY BARKER  
Supervisor, Corporations

(Plus all the volunteer  
help we can get)

TO: Tammy Mowrer

AGENCY: DEP-Air Quality

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 13, 1995

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 25 TITLE: 45 DEP-Air Quality

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Tammy S. Mowrer

TITLE OF PERSON SIGNING: Administrative Secretary

DATE: November 28, 1995

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.