

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

FILED

JUN 2 4 37 PM '93

**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Air Pollution Control Commission TITLE NUMBER: 45CSR25
RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §16-20-5 and §20-5E-7
AMENDMENT TO AN EXISTING RULE: YES X NO
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR25

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: Tuesday, July 6, 1993 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
Conference Room
1558 Washington Street, East
Charleston, WV 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH X

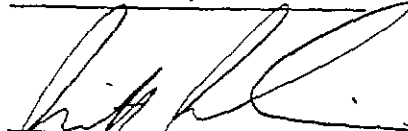
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Britt A. Bernheim, Secretary

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

Air Pollution Control Comm.
1615 Washington Street, East
Charleston, WV 25311


Britt A. Bernheim, Secretary

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: X Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next 1993-94	1994-95
Estimated Total Cost	\$-----	\$-----	\$131,183	"	"
Personal Services	-----	-----	112,883	"	"
Current Expense	-----	-----	18,250	"	"
Repairs and Alterations	-----	-----	-----	-----	-----
Equipment	-----	-----	-----	-----	-----
Other	-----	-----	-----	-----	-----

2. Explanation of above estimates:

Estimates based upon work program submitted to USEPA and reflected in the Office's FY93 and FY94 appropriation request - 75% of program funding is from federal grants. No increase in program costs anticipated due to proposed rule revisions.

3. Objectives of these rules:

The proposed revisions to 45CSR25 are to update the air quality-related portion of the state's hazardous waste management regulations to be in conformance with new USEPA requirements.

Appendix B
Fiscal Note For Proposed Rules
Page Two

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

No impact anticipated due to proposed rule revisions.

B. Economic impact on political subdivisions; specific industries;
specific groups of citizens.

No impact as a result of the proposed state rule revisions - new
requirements incorporated as a result of USEPA rule changes.

C. Economic impact on citizens/public at large.

None anticipated.

Date:

7-1-73

Signature of agency head or authorized representative:

G. Dale Farley
Chief, Office of Air Quality

45CSR25

SUMMARY

45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities" was originally promulgated by the Air Pollution Control Commission on May 15, 1984, and was most recently updated effective July 14, 1989. This particular rule is part of the State Hazardous Waste Management Program. Hazardous waste rules are primarily administered by the Office of Waste Management. However, the destruction of hazardous waste by on-site incineration or the use of hazardous waste as on-site fuel in boilers and industrial furnaces is administered by the Office of Air Quality in conjunction with the Office of Waste Management.

The revisions contained in the proposed rule are adopted by reference from the Code of Federal Regulations. Subparts of the Code of Federal Regulations which have been added to this proposed rule since last promulgation are as follows:

Subpart

40 CFR 264	X	"Miscellaneous Units"
40 CFR 270.23	B	"Specific Requirements for Miscellaneous Units"
40 CFR 264, 265	AA	"Air Emissions Standards for Process Vents"
40 CFR 270.24	B	"Specific Requirements for Process Vents"
40 CFR 264, 265	BB	"Air Emission Standards for Equipment Leaks"
40 CFR 270.25	B	"Specific Requirements for Equipments"
40 CFR 266	H	"Hazardous Waste Burned in Boilers and Industrial Furnaces"
40 CFR 270.22	B	"Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes"
40 CFR 270.66	F	"Permits for Boiler and Industrial Furnaces Burning Hazardous Waste"
40 CFR 266	E	"Used Oil Burned for Energy Recovery"

The subparts added above are directed primarily at emission standards for process vents and equipment leaks and requirements for boilers and industrial furnaces burning hazardous waste.

FILED

45CSR25

Jan 2 4 37 PM '93

TITLE 45
LEGISLATIVE RULES
WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 25
TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE
TREATMENT, STORAGE, OR DISPOSAL FACILITIES

§ 45-25-1. General.

1.1. Scope.

a. The intent and purpose of this rule is to establish 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. 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. 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.

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

d. Permit applications filed pursuant to this rule shall be processed in accordance with the permitting procedures as set forth in W. Va. Code §20-5E-1, et seq., and this rule.

1.2. Authority. -- W.Va. Code 16-20-5 and § 20-5E-7 (e).

1.3. Filing Date. --

1.4. Effective Date.--

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

§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 §16-20-2, 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, on a case-to-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 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.

2.8. "Chief" means the Chief of the West Virginia Office of Air Quality, Division of Environmental Protection.

2.9. "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.

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

2.12. "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.

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

2.13. "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 Code § 22-1-1, et seq.

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

2.15. "Hazardous Waste" means a hazardous waste as defined in Section 3.1.3 of 47 CSR 35 Hazardous Waste Management Regulations.

2.16. "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.

2.17. "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.

2.18. "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.

2.19. "Industrial Furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplished 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 used 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 Division of Environmental Protection 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.

2.20. "Infectious Medical Waste" shall have the meaning ascribed to it in 64 CSR 56 "Infectious Medical Waste", (April 23, 1992), promulgated by the Division of Health.

2.21. "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.

2.22. "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.

2.23. "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.

2.24. "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").

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

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

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

2.28. "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 including, but not limited to, 45 CSR 6 and 13.

2.29. "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.

2.30. "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.

2.31. "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.

2.32. "Solid Waste" means any solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations, or from community activities which:

- a. Is discarded or is being accumulated, stored, or physically, chemically, or biologically treated prior to being discarded; or
- b. Has served its original intended use and sometimes is discarded; or
- c. Is a manufacturing by-product and sometimes is discarded.

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

2.34. "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.

2.35. "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").

2.36. "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.

2.37. "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.

2.38. "Waste" shall have the same meaning ascribed in subsection 3.1.2 of 47 CSR 35.

2.39. "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;
- c. Meets the definition of a tank as defined in Section 2 of this rule.

2.40. 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, et seq., or W. Va. Code 20-5E-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" as approved by the Legislature in House Bill 100 (Omnibus Rules Bill) on May 26, 1993 are hereby adopted by reference with the following modifications:

a. Whenever the term "Chief" is used, in 47 CSR 35 Sections 2, 3, 6, 8, 9, 10, 11, the term shall have the meaning of the Chief of the Office of Air Quality of the Division of Environmental Protection.

3.2. The provisions contained in the Code of Federal Regulations (1991), 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 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 Division of Environmental Protection, Office of Air Quality.

\$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
- c. 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 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) program under 45 CSR 14 or the Federal Clean Air Act;
- c. Nonattainment program under West Virginia DEP, Office of Air Quality or the Federal Clean Air Act and 45 CSR 19;
- d. National Emission Standards for Hazardous Pollutants (NESHAP) preconstruction approval under 45 CSR 15 or the Federal Clean Air Act;
- e. Standards of Performance for New Stationary Sources under 45 CSR 16 or the Federal Clean Air Act; and
- f. Other relevant air pollution control permits including local permits.

4.3. Owners and operators of hazardous waste management facilities shall comply with the personnel training requirements as specified by Subsection 8.2.7 of 47 CSR 35. 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 with Part B of the permit application.

4.4. 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.

4.5. 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.

4.6. 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.

4.7. Tanks used to treat or store hazardous waste containing liquid waste whose true vapor pressure is greater than 10.5 kilo Pascals (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.

4.8. Emissions of hazardous waste whose true vapor pressure is greater than 10.5 kilo Pascals (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;
- 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.

4.9. 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 control 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:

- 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.

4.12. 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:

- a. Process turn-arounds;
- b. Cleaning of process equipment;
- c. Planned process shutdowns; and
- d. Tank truck, railroad tank car, and barge cleaning.

4.13.a. The Chief may, on 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 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.

b. For the purpose of permit enforcement, compliance with the operating requirements specified in the permit (40 CFR 264.345), will be regarded as compliance with 40 CFR 264.343. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of 40 CFR 264.343 may be "information" justifying modification or revocation of a permit.

4.14. **Emergency Permit.** Notwithstanding any other provision in Section 11 of 47 CSR 35, in the event the Chief finds an imminent and substantial danger to human health or the environment, the Chief 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 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.

5.3. 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 possession shall be available to the public for inspection and copying: provided, however, that upon satisfactory showing to the Chief 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 shall consider, treat, and protect such records as confidential pursuant to W. Va. Code §20-5E-1, et seq., and §16-20-1, 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 11.24, except that the owner or operator shall place a Class I-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 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:

<u>ACTIVITY</u>	<u>FEES</u>
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 Commission or the 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 Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Chief and such determination shall be based upon the application of the more stringent provision, term, condition, method and rule.

45 CSR 25

TABLE 25-A

<u>CFR No.</u>		<u>Part No.</u>		<u>Subpart No.</u>		<u>Title</u>
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
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	-	266	-	D	-	Hazardous Waste Burned for Energy Recovery
	-	266	-	E	-	Used Oil Burned for Energy Recovery



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

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Charleston, West Virginia 25305-0310
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GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

June 2, 1993

Britt A. Bernheim, Secretary
West Virginia Air Pollution
Control Commission
1615 Washington Street, East
Charleston, West Virginia 25311

Re: 45CSR15 - "Emission Standards for Hazardous Air
Pollutants"

45CSR16 - "Standards of Performance for New Stationary
Sources"

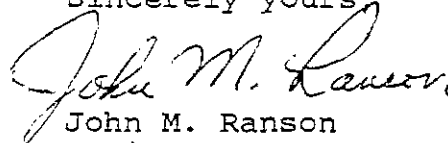
45CSR25 - "To Prevent and Control Air Pollution From
Hazardous Waste Treatment, Storage, or
Disposal Facilities"

Dear Ms. Bernheim:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby
consent to the proposal of the rules specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours


John M. Ranson
Cabinet Secretary

JMR:ro

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