

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

Do Not Mark In this Box

FILED
OCT 2 11 24 AM '98
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

West Virginia Division of Environmental Protection
AGENCY: Office of Waste Management TITLE NUMBER: 33

CITE AUTHORITY W.Va. Code §22-18-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: Hazardous Waste Management

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

BF Smith

Authorized Signature
B. F. Smith, P.E., Chief
Office of Waste Management

\$17.50



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
COMMISSIONER

July 24, 1998

Ms. Judy Cooper
Director
Administrative Law Division
Capitol Complex
Charleston, WV 25305

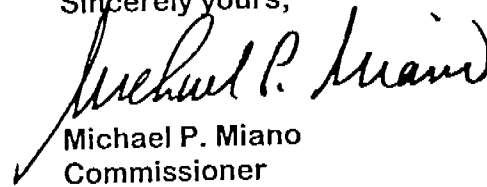
RE: 33CSR20 - "Hazardous Waste Management Rule"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office and Legislative Rule-Making as an agency-approved rule.

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

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Carrie Chambers
Terrie Sangid

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 3, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Division of Environmental Protection, Office of Waste Management

1356 Hansford Street, Charleston, WV 25301-1401

Telephone: (Mike Dorsey) 558-5989

LEGISLATIVE RULE TITLE: 33 CSR 20

Hazardous Waste Management

1. Authorizing statute(s) citation W.Va. Code 22-18-6

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 22, 1998

b. What other notice, including advertising, did you give of the hearing?

Statewide news release

c. Date of Public Hearing(s) or Public Comment Period ended:

July 22, 1998

hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: Hazardous Waste Management

A. AUTHORITY: WV Code §22-18-6

B. SUMMARY OF RULE:

The proposed amendment to this rule is being submitted in order to adopt additional federal regulations by reference, and to offer additional language for clarification, particularly in §33-20-11. In addition, the fee for a Class I permit that does not require the approval of the Chief of the Office of Waste Management has been reduced from \$1250 to \$500.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

In May of 1986, the West Virginia Division of Natural Resources (DNR) received authorization from the United States Environmental Protection Agency (EPA) to implement the base program Subtitle C of the Federal Resource Conservation and Recovery Act (RCRA) of 1976, as amended. Subtitle C of RCRA establishes the hazardous waste management program on a national level. Inclusive of the program is the ability of each State to obtain the authority to implement the program in lieu of the EPA.

This proposed amendment to this rule adopts additional federal regulations by reference and clarifies the current rule which will satisfy federal requirements of consistency and equivalent stringency to allow authorization of the federal program to the state and ensure that significant federal funds are allotted to the West Virginia program each year. The Class I permit fee decrease was driven by the fact that this type of permit modification does not require an extensive review by this agency, nor the Chief's signature; therefore, this agency considers \$500 a fairer fee.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

W.Va. Code Section §22-1-3 in conjunction with W.Va. Code Section §22-1-3a requires, in part, the Director of the Division of Environmental Protection, to determine if a new or amended environmental provision should be the same in substance as a counterpart federal regulation. If the new rule should be the same in substance, as the counterpart federal regulation, then the Director shall incorporate by reference, to the greatest extent possible, the federal counterpart rule. If the Director determines the rule should not be the same in substance as the federal counterpart rule, then the Director shall file a statement setting forth the difference between the proposed rule and the counterpart federal regulation. W.Va.

Code Section §22-1-3a requires the Director to conduct the "stringency" determination and provide specific reasons for deviation of the proposed state rule from the federal counterpart regulation.

The proposed amendment to the rule will adopt additional federal counterpart regulations by reference.

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:

After review of 33CSR20 at their July 22, 1998 meeting, Council recommended to the Director that 33 CSR20 be filed as amended. No other amendments were recommended. Minutes of that meeting are attached.

MINUTES

DIVISION OF ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 22, 1998, DIRECTOR'S CONFERENCE ROOM, NITRO HEADQUARTERS

The eleventh meeting of the DEP Advisory Council was held Wednesday, July 22, 1998, in the Director's Conference Room, Nitro Headquarters' Offices. The meeting was called to order at 1:00 p.m. by Chairman Mike Miano.

ATTENDING:

Advisory Council Members:

Michael P. Miano, Chairman
Jacqueline Hallinan
Larry Harris
William Raney
Rick Roberts
William Samples

Environmental Protection:

John Ailes	Jennifer Pauer
John Benedict	Pete Pitsenbarger
Dick Cooke	Ken Politan
Mike Dorsey	Cap Smith
Andy Gallagher	Barb Taylor
Randy Huffman	Karen Watson
Pat Park	Mike Zeto

1) Introduction of A. V. Gallagher, DEP's Chief Communications Officer.

Chairman Miano introduced DEP's new Chief Communications Officer, A. V. Gallagher. Council Members welcomed Mr. Gallagher and wished him well in his new job.

2) Review and Approval of Minutes of April 30, 1998.

The minutes of the April 30 meeting were approved with the correction of two typos. Mr. Roberts brought to everyone's attention the discussion in the April 30 minutes of AML funding issues in the last meeting, and the Council's desire to send letters to West Virginia's Congressional delegation to identify West Virginia's share of the AML funds that need to be

released by the US Congress. Separate letters would go to West Virginia's legislative leadership informing them of the problems created by not having the AML funds available, with a copy of the letters sent to the Congressional delegation attached to them.

Randy Huffman asked if the Council members would like to sign each letter individually. They each expressed their desire to do so. Pat Park, AML, distributed a copy of the draft letters to Council for their review. After several minutes of discussion, it was decided the draft letters would be edited and made available to the Council members for their signature before the end of the meeting.

Mr. Miano said that Pete Pitsenbarger would like a few minutes of the Council's time before they continued with the agenda.

Mr. Pitsenbarger informed the Council of his retirement plans for the end of August. He said he would like to express his heartfelt thanks to the Council for their letter of appreciation they had sent him thanking him for his many years of service to the State of West Virginia. Mr. Pitsenbarger said his years in state government had been a wonderful opportunity, and he will miss both the work and the people.

3) Review of Proposed DEP Rules in Accordance with WV Code §22-1-3(c).

Mr. Miano asked if there were any other issues to be discussed before continuing with the Agenda and the review of DEP proposed rules for the 1999 session.

Mr. Roberts said he would like to express his concern with the approach DEP has taken in involving the Council members in the rulemaking process -- not only this year, but in the past. He said the rules are not sent to the Council members until the last minute and they are not given adequate time to review and comment on them.

It was pointed out that the law [22-1-1(c)] specifically requires the Council to be consulted prior to the proposal of any new rule.

Mr. Raney said he would like to go on record wholeheartedly in agreement with the concerns of Mr. Roberts. He said he has great concerns with giving advice or recommendations to the Director on development of rules (or amendments to rules) the Council members were not involved in before they were filed with the Secretary of State's Office for Public Hearing and Comments. He said he believes there definitely needs to be improvement in this process in the future.

A discussion was then held on possible ways to bring the Council into the rulemaking process in an earlier stage of rule development. Several DEP staff members expressed their frustrations with the rulemaking process, and gave one example as the short period of time between the signature of bills by the Governor and the early filing date of the rules with the

Legislative Rulemaking Review Committee. Another example that was given was turnaround time with federal agencies, i.e., EPA and OSM, which are also involved in the process.

After several minutes of discussion, Mr. Huffman stated, with the Chairman's approval, that he would put together a committee to discuss the Council's concerns and get back to the Council with their recommendations by the first of September.

Mr. Miano also expressed his desire to improve the involvement of the Council in the rulemaking process, and assured the Council that everything possible would be done in the future to comply with the Council's recommendations.

[It should be noted that at this time Ms. Hallinan left the Advisory Council Meeting because of a previously-scheduled commitment].

Continuing with the agenda, Mr. Miano said that staff would be available from each program office to give a brief description of the proposed new rules or rule amendments and to answer any questions the Council members might have. If a question should come up that couldn't be answered during the meeting, we would make note of it and get back with an answer to the Council as soon as possible. The first rule on the agenda is 60CSR4, filed under the Director's Office.

60CSR4 - "AWARDING OF WEST VIRGINIA STREAM PARTNERS PROGRAM GRANTS RULE"

Jennifer Pauer, AML, said 60CSR4 is a new rule that is being proposed by the West Virginia Stream Partners Program to provide requirements and guidance concerning the awarding of grants to broad-based community organizations for watershed improvement projects. Ms. Pauer stated that the program is a joint effort of DEP, Forestry, Natural Resources, and the West Virginia Soil Conservation Agency.

A brief discussion was held concerning the source of the funding, availability of the funds, guidelines for criteria, and possible additional funding. Mr. Samples asked if there could also be additional funding sources, for example contributions from supplemental environmental projects used to offset proposed penalties. Ms. Pauer stated that as the rule now stands, it's only purpose is to distribute the funds, but she would check into the law and let the Council know if language could be added to also implement provisions for additional funding from penalty collections or other sources. Mr. Raney moved to recommend to the Chairman (in his capacity as Director of DEP) the filing of 60CSR4 with the condition that Mr. Samples' recommendation be considered. The motion was seconded and passed unanimously.

The following Air Quality rules were discussed by Karen Watson, OAQ, with assistance from John Benedict, also from the OAQ office:

45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"

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

45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"

45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"

45CSR24 - "TO PREVENT AND CONTROL EMISSIONS FROM HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS"

45CSR36 - "CONFORMITY TO STATE OR FEDERAL IMPLEMENTATION PLANS OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS DEVELOPED, FUNDED OR APPROVED UNDER TITLE 23 U.S.C. TO THE FEDERAL TRANSIT LAWS, TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS (TRANSPORTATION CONFORMITY)"

45CSR8 - "AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES AND PARTICULATE MATTER"

45CSR9 - "RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE AND OZONE"

Ms. Watson gave the Council a brief explanation of the proposed OAQ rules. She explained that seven rules (45CSR33, 25, 34, 16, 36, 8, and 9) were being amended to conform to federal regulations, and 45CSR24 is a proposed new rule to adopt federal New Source Performance Standards for new and existing hospital/medical/infectious waste incinerators. This rule also incorporates by reference the federal standards, with limited exception.

Mr. Raney said he had always questioned the validity of the Appendix B Fiscal Note that is attached to each rule that is filed; in particular the section that relates to the effect of the proposed rule which usually contains all zeros.

John Benedict explained that is a question that has come up several times in the past, and the agency has always taken the position that the numbers are reflective of the cost to the state of implementing the new rule or the proposed amendments to an existing rule.

After a brief question and answer session of the OAQ rules, Mr. Raney moved that recommendation be made to the Director that all eight (8) rules be filed, as proposed, with the exception that 45CSR34, subdivision 4.1.b, be revised to clarify that 45CSR30 includes certain requirements relating to Section 112(r) of the Clean Air Act. The motion was seconded and passed unanimously by the Council.

38CSR2 - "SURFACE MINING AND RECLAMATION RULE"

John Ailes, Chief of OMR, said the amendments to this year's submission of the Surface Mining and Reclamation rule were few in number. Two new definitions were added,

“mountaintop mining operation” and “area mining operation,” and only minor cleanup to correct typographical errors and update and clarify other sections within the rule. Mr. Raney moved recommendation be made to the Chairman that the rule be filed as proposed. The motion was seconded and passed unanimously by the Council.

Mike Dorsey and Dick Cooke from the Office of Waste Management described the following Waste Management rules:

33CSR20 - “HAZARDOUS WASTE MANAGEMENT RULE”

33CSR1 - “SOLID WASTE MANAGEMENT RULE”

33CSR2 - “SEWAGE SLUDGE MANAGEMENT RULE”

Mike Dorsey explained the amendments to 33CSR20 - Hazardous Waste Management Rule. Along with other federally-required amendments to this rule, Section 11 contains a major rewrite to conform with the federal requirements of 40 CFR Part 124.

Mr. Samples asked why it takes up to 120 days to receive approval from the state to exclude a waste at a particular generating facility when EPA has already approved the petition - could the time be changed from 120 days to 60 days?

Cap Smith, Chief, OWM, said the time of 60 to 120 days is just a general number. He stated that he didn't see a problem with changing the time from 120 days to 60 days. He said it rarely takes anywhere close to that time to approve or deny the petition - it is usually taken care of in a matter of days.

There was some discussion as to whether this amendment should be proposed in this legislative session. The Council decided to wait until the rule is modified and filed in the 2000 Legislative Session to propose the amendment.

Dick Cooke, OWM, briefed the Council on 33CSR1. He said the revision is necessary to ensure consistency between the WV Code and 33CSR1. The emergency rule will establish criteria in determining a commercial solid waste facility's monthly tonnage limits, as required by Chapter 22, Article 15, as amended by Senate Bill No. 178.

Mike Zeto, Environmental Enforcement Office, then discussed 33CSR2 and explained the proposed emergency rule is necessary to update the Sewage Sludge Management rule to comply with mandates of Senate Bill 178. The revisions and inclusions are necessary to ensure consistency between the WV Code and 33CSR2. The emergency rule will also impose new requirements relating to the management of sewage sludge as required by Chapter 22, Article 15, as amended by Senate Bill 178, specifically as it relates to the control of off-site odors, and the protection of waters of the state.

After discussion was completed on the Waste Management rules, Mr. Raney moved to recommend that the Chairman file the Waste rules as proposed. The motion was seconded and passed unanimously.

The following Office of Water Resources rules were reviewed by Barb Taylor and Ken Politan.

47CSR31 - "STATE WATER POLLUTION CONTROL REVOLVING FUND"

47CSR33 - "STATE CONSTRUCTION GRANTS PROGRAM RULE"

47CSR3 - "POLLUTION PREVENTION AND COMPLIANCE ASSISTANCE"

47CSR4 - "STATE CERTIFICATION OF ACTIVITIES REQUIRING NATIONWIDE PERMITS NO. 21 AND NO. 26"

Barb Taylor, Chief, OWR, explained the amendments contained in 47CSR31, 33, and 3. She said 47CSR31 is being amended to comply with the latest revisions of the Clean Water Act and current design practices; 47CSR33 is a proposed new rule which allows DEP to make grants to communities to provide adequate wastewater collection and/or treatment services; and 47CSR3 is a new proposed rule to implement the provisions of HB 4693 passed during the 1998 Session to promote pollution prevention by encouraging reduction or elimination of pollutants at the source through process modification, material substitution, in-process recycling, reduction of raw material use or other source reduction opportunities.

Mr. Roberts asked if the proposed amendments to prohibit the use of closed-vessel ultraviolet disinfection and inverted siphons in "Appendix B" under "Design Standards for Collection Systems and Treatment Works" is one recommended by EPA or by the state.

Ms. Taylor replied that she would need to check with Bob Coontz in Water Resources' Construction Assistance Office who drafted the proposed rule amendments, and have Mr. Coontz get back with Mr. Roberts with an answer as soon as possible.

The last rule to be addressed by the Council, 47CSR4, was reviewed by Ken Politan from the Office of Mining and Reclamation. Ken stated that this is a new proposed rule that will establish a water certification program for surface mining operations and will implement the provisions of SB 145 passed during the 1998 Session.

Mr. Raney asked if implementation of this rule was specifically mandated in SB 145.

Mr. Politan said no, but the agency felt the proposed rule is needed to give some guidance in the implementation of the Senate bill.

Mr. Raney voiced his concern over the rule. He said he did not believe it was a workable

rule, and he had received several comments from others indicating the same concerns. He said that one of his biggest objections to the proposed rule was lack of input from outside DEP when the rule was written. Mr. Raney stated that SB 145 indicates the Director shall confer with representatives of the surface coal mining industry and representatives of environmental organizations who have an interest in water quality, before such a manual is developed and DEP staff did not do this.

After several minutes of discussion concerning 47CSR4, Mr. Raney made a motion to recommend that the Chairman file 47CSR3, 31, and 33 as proposed, with the condition that Mr. Roberts' questions are addressed in 47CSR31; that the comment period be extended after the end of the public hearing for 47CSR4, and any actions to implement the proposed rule be delayed until such time as a more workable rule can be drafted with the opportunity for input from interested parties. The motion was seconded and passed with a 3 to 1 vote.

Due to the length of time taken to review the proposed rules, there was no open discussion by the Council members. The meeting was adjourned at 5:15 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 33, Series 20, Hazardous Waste Management
Type of Rule: XX Legislative Interpretive Procedural
Agency: Division of Environmental Protection
Address: Office of Waste Management
1356 Hansford Street
Charleston, WV 25301-1401

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ Unknown	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

This amendment will adopt by reference additional federal regulations and will add clarifying language to the existing Hazardous Waste Permit Program section (33-20-11). These amendments will not require additional staff nor operating expenses above the current level; however, there will be a decrease in Class I permit fees from \$1,250.00 to \$500.00. The impact of this decrease is not known since the agency has no control over the number of these modifications implemented by industry.

3. Objectives of these rules:

The objective of this rule is to stay in compliance with federal guidelines when implementing the State program. The consistency achieved in these revisions assures the State of maintaining its authorization status and, in turn, the continued receipt of federal funds that are vitally needed to implement the program.

Rule Title: Title 33, Series 20 Hazardous Waste Management

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries, Specific groups of Citizens.

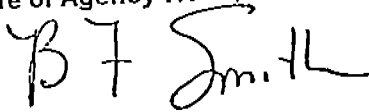
Permitted facilities should realize a slight economic benefit due to the decrease in Class I permit fees.

C. Economic Impact on Citizens/Public at Large.

N/A

Date:

Signature of Agency Head or Authorized Representative



B. F. Smith, P.E.
Chief
Office of Waste Management

TITLE 33
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT

SERIES 20
HAZARDOUS WASTE MANAGEMENT RULE

FILED
OCT 2 11 24 AM '98
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 33-20-1. SCOPE AND AUTHORITY.

1.1. **Scope and Purpose.** -- The purpose of this rule is to provide for the regulation of the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment.

1.2. **Authority.** -- This rule is promulgated pursuant to the West Virginia Hazardous Waste Management Act, W. Va. Code, § 22-18-1, et seq.

1.3. **Filing Date.** -- ~~June 18, 1997~~ June 22, 1998

1.4. **Effective Date.** -- ~~July 1, 1998~~

1.5. **Amendment of Former Rule.** -- This rule amends the Hazardous Waste Management rule, 33 CSR 20, in effect prior to the date this rule becomes effective.

1.6. **Incorporation by Reference.** -- Whenever either federal statutes or regulations or state statutes or rules are incorporated by reference into this rule, the reference is to that statute or regulation in effect on July 1, 1996~~7~~, unless otherwise noted in the text of this rule. This incorporation by reference is not intended to replace or abrogate federal authorities granted the Resource Conservation and Recovery Act of 1976.

1.6.a. In applying the federal requirements incorporated by reference throughout this rule, the following exceptions or substitutions apply, unless the context clearly requires otherwise or the referenced rule cannot be delegated to the state:

1.6.a.1. "Office of waste management, West Virginia division of environmental protection" shall be substituted for "environmental protection agency."

1.6.a.2. "Chief of the office of waste management, West Virginia division of environmental protection" shall be substituted for "administrator," "regional administrator," and "director." In

those sections that are not adopted by reference or that are not delegable to the state, "administrator", "regional administrator", and "director" shall have the meaning defined in 40 CFR § 260.10.

1.6.a.3. Whenever the regulations require publication in the "Federal Register" compliance shall be accomplished by publication in the "West Virginia Register," a part of the "State Register" created pursuant to the provisions of W. Va. Code, § 29A-2-2 for those areas applicable and delegable to the state.

1.6.a.4. Whenever in the federal regulation reference is made to the Resource Conservation and Recovery Act of 1976 § 3010, as amended (42 U.S.C. § 6930), the reference should be to section 4 of this rule. The notification requirements of the Resource Conservation and Recovery Act of 1976 §§ 3010 remain in effect and will be satisfied by compliance with section 4 of this rule.

1.7. Cross Reference. -- Whenever a reference is cited in a provision incorporated by reference which cross reference was not incorporated by reference, the provisions of the applicable state law and rules, if any, control to the extent of any conflict or inconsistency. Where state rules are present and there is a question, the state rules govern. Where there are no state regulations present, federal regulations govern. For example, cross reference to 40 CFR part 264 subpart O -- Incinerators, which was not incorporated by reference, would need to be referenced to the applicable West Virginia division of environmental protection, office of air quality rule, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."

1.8. Inconsistencies with the West Virginia Code. -- In the event a provision of the code of federal regulations incorporated by reference herein includes a section which is inconsistent with the West Virginia Code, the West Virginia Code controls to the extent federal law does not preempt the state law. In the event a provision of the code of federal regulations incorporated by reference herein is beyond the scope of authority granted the division of environmental protection pursuant to statute, or is in excess of the statutory authority, such provision shall be and remain effective only to the extent authorized by the West Virginia Code.

1.9. Provisions Applied Prospectively. -- The provisions of this rule are to be applied prospectively. All orders, determinations, demonstrations, rules, permits, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted, approved or allowed to become effective by the chief, and which are in effect on the date this rule becomes effective, shall continue in effect according to their terms unless modified, suspended or revoked in accordance with the law.

§ 33-20-2. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL.

2.1. 40 CFR Part 260. -- The provisions of 40 CFR part 260 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

2.1.a. The definitions of terms used in this rule shall have the meaning ascribed to them in 40 CFR parts 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 273 and 279 with the exceptions, modifications and additions set forth in this section.

~~2.1.a.1. "Major facility" means a disposal or treatment facility which disposes or treats an amount of hazardous waste exceeding or equal to one thousand (1000) tons during a calendar year, and any storage facility having a storage capacity for one thousand (1000) tons of hazardous waste or more.~~

~~2.1.a.2.~~ **2.1.a.1.** "Full regulation" means those rules applicable to generators of greater than one thousand (1000) kilograms of non-acutely hazardous waste in a calendar month and/or who treat, store or dispose of hazardous waste at their facility.

~~2.1.a.3.~~ **2.1.a.2.** "Mercury containing lamp" means an electric lamp in which mercury is purposely introduced by the manufacturer for the operation of the lamp. Mercury containing lamps commonly include fluorescent lamps.

~~2.1.a.4.~~ **2.1.a.3.** "Universal Waste" means any of the following hazardous wastes that are managed under the universal waste requirements of 40 CFR part 273:

- (1) Batteries as described in 40 CFR § 273.2;
- (2) Pesticides as described in 40 CFR § 273.3; and
- (3) Thermostats and mercury containing lamps as described in 40 CFR § 273.4.

2.2. 40 CFR § 260.2. -- The provisions of 40 CFR § 260.2 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W. Va. Code, §22-18-12.

2.3. 40 CFR §§ 260.21(d) and 260.23. -- The provisions of 40 CFR § 260.21(d) and 40 CFR § 260.23 are excepted from incorporation by reference.

2.4. Petitions for Waste Exclusions.

2.4.a. Persons desiring to exclude a waste at a particular generating facility from the lists set forth in 40 CFR part 261 may petition the chief for such an exclusion after having received

approval from the administrator of the environmental protection agency. The petition shall include:

2.4.a.1. A copy of the petition submitted to the administrator of the environmental protection agency pursuant to 40 CFR § 260.22, including all demonstration information;

2.4.a.2. A copy of the administrator's approval granting the exclusion pursuant to 40 CFR § 260.20(d); and

2.4.a.3. Any other additional information which may be required for the chief to evaluate the petition.

2.4.b. Within one hundred and twenty (120) days of the filing of the petition the chief shall decide whether to approve or to deny the petition and so advise the petitioner. Where a decision to deny a petition is made, the chief shall notify the petitioner of such action in writing, setting forth the reasons therefor.

2.4.c. The chief shall not deny a petition to exclude a waste at a particular facility that has been approved by the administrator unless scientifically supportable reasons for such denial are advanced which had not been presented to the administrator.

2.5. Petitions to amend the regulations to include additional wastes as universal wastes.

2.5.a. Persons desiring to include a waste as a universal waste may petition the chief for such an inclusion after having received approval from the administrator of the environmental protection agency. The petition shall include:

2.5.a.1. A copy of the petition submitted to the administrator of the environmental protection agency pursuant to 40 CFR § 260.23, including all demonstration information;

2.5.a.2. A copy of the administrator's approval granting the exclusion pursuant to 40 CFR § 260.20 and 40 CFR part 273; and

2.5.a.3. Any other additional information which may be required for the chief to evaluate the petition.

2.5.b. Within one hundred and twenty (120) days of the filing of the petition the chief shall decide whether to approve or to deny the petition and so advise the petitioner. Where a decision to deny a petition is made, the chief shall notify the petitioner of such action in writing, setting forth the reasons therefor.

2.5.c. The chief shall not deny a petition to include a waste as a universal waste that has been approved by the administrator

unless scientifically supportable reasons for such denial are advanced which had not been presented to the administrator.

2.5.d. Any person may petition the chief to include a waste as a universal waste as follows:

2.5.d.1. Submit a petition to the chief demonstrating that the regulation under the universal waste regulations of 40 CFR part 273 is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition should also include information required by 40 CFR § 260.20(b), and include as many of the factors listed in 40 CFR § 273.81 as are appropriate for the waste or category of waste addressed in the petition.

2.5.d.2. The chief will grant or deny a petition using the factors listed in 40 CFR § 273.81. The decision will be based on the weight of evidence showing that regulation under 40 CFR part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

2.5.d.3. The decision of the chief shall be in writing and state the reasons to either grant or deny the petition. Any petitioner aggrieved by the decision of the chief may appeal the decision to the environmental quality board in accordance with the provisions of W.Va. Code § 22-18-20.

§ 33-20-3. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

3.1. 40 CFR Part 261. -- The provisions of 40 CFR part 261 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

3.1.a. In order for a mixture of a waste and one or more hazardous wastes identified in 40 CFR §§ 261.3(a)(2)(iv) to be exempt from the definition of hazardous waste, the owner or operator must comply with the following:

3.1.a.1. Provide a certification in writing to the chief that groundwater monitoring complying with either 40 CFR part 265, subpart F or which is approved by the chief, is or will be in place at the wastewater treatment facility identified in 40 CFR § 261.3(a)(2)(iv). A time schedule for the installation of such groundwater monitoring must be included. This requirement does not apply to wastewater treatment units or containers.

3.1.a.2. Before claiming an exemption, the owner or operator of each wastewater treatment facility receiving mixtures

of wastes under 40 CFR § 261.3(a)(2)(iv) shall notify the chief of the receipt of such wastes on a form prescribed by the chief.

3.1.a.3. Annually submit to the chief a list of hazardous wastes that are expected to be present in the mixture to be exempted.

3.2. The provisions of 40 CFR § 261.5 (f)(3)(iv) and(v) and 40 CFR §261.5(g)(3)(iv) and (v) are excepted from incorporation by reference. Conditionally exempt small quantity generators shall notify the chief of their hazardous waste activity in accordance with Section 4 of this rule.

3.3. The provisions of 40 CFR § 261.9 are amended by revising 40 CFR § 261.9(c) to read as follows:

(C) Thermostats and mercury containing lamps as described in 40 CFR § 273.4.

3.4 West Virginia recognizes the decision by the U.S. Court of Appeals for the District of Columbia Circuit which vacated several carbamate listings, {Dithiocarbamate Task Force v. Environmental Protection Agency, 98 F.3d 1394 (D.C. Cir. 1996)}. The following waste listings are excluded from the incorporation by reference of 40 CFR 261.

3.4.a. In 40 CFR § 261.3(a)(2)(iv)(F) and (G), K156 and K157 are excluded to the extent that they encompass 3-iodo-2-propynol n-butylcarbamate (IPBSC).

3.4.b. In 40 CFR § 261.32, K160 is excluded and K156, K157 and K158 are excluded to the extent that they encompass 3-iodo-2-propynol n-butylcarbamate (IPBC).

3.4.c. In 40 CFR § 261.33(f), the following wastes are excluded: U277, U365, U366, U375, U376, U377, U378, U379, U381, U382, U383, U384, U385, U386, U390, U391, U392, U393, U396, U400, U401, U402, U403 and U407.

3.4.d. In 40 CFR 261, Appendix VII, the basis for listing K160 is excluded, and the basis for listing K156, K157 and K158 is excluded to the extent that they encompass 3-iodo-2-propynol n-butylcarbamate (IPBC).

3.5. The provisions of 40 CFR §§261.1, 261.2, 261.4 and 261.8 regarding the recycling of certain scrap metals and shredded circuit boards as amended and finalized in 61 62 Federal Register 25998 (May 12, 1997) and 63 Federal Register 28555 (May 26, 1998) are hereby incorporated by reference.

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

§ 33-20-4. NOTIFICATION OF HAZARDOUS WASTE ACTIVITY REGULATIONS.

4.1. Applicability. Any person that engages in a hazardous waste activity in the State of West Virginia shall notify the chief of these activities when such activity begins, unless such activities are exempted from the requirements of this rule.

4.1.a. Any person as described in subsection 4.1 of this rule that has notified the EPA or is subject to the requirements to notify EPA as specified in volume 45, number 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754, is subject to the provision of section 4 of this rule.

4.1.b. The purpose of section 4 of this rule is to provide a means for the State of West Virginia to utilize the information provided by all who complied with the notification requirements of EPA as described in subdivision 4.1.a. of this rule or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in subdivision 4.1.a of this rule to notify the chief of their hazardous waste activities.

4.2. Notification. Any person that notified EPA of hazardous waste activities as referenced above in subsection 4.1 of this rule shall provide a copy of that notification to the chief.

4.2.a. Any person involved in hazardous waste activities that did not comply with the notification requirements of EPA, as referenced above in subsection 4.1 of the rules, but is subject to those requirements shall notify the chief in writing of his hazardous waste activities within thirty (30) days of the effective date of this rule. Notification may be accomplished by the use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

4.2.b. Any person exempted from the federal notification requirements as specified in 40 CFR §§ 261.6(b) and 261.5, but subject to West Virginia notification requirements, shall notify the chief in writing of his hazardous waste activities on the date of initiation of such activities. Notification may be accomplished by use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

4.2.c. One notification form is required for each generator.

4.2.d. A notification form is required for each storage, treatment, disposal, or other facility. However, if one facility

site includes more than one storage, treatment, or disposal activity, only one notification form for the entire facility site is required.

4.2.e. Generators that store, treat, or dispose of hazardous waste on-site shall file a notification form for generation activities as well as storage, treatment, and disposal activities, unless such activities are exempted from the requirements of this rule.

4.2.f. New generators and those initiating activities subsequent to the EPA notification period referenced in subdivision 4.1.a. of this rule shall comply with the EPA identification number requirements and shall provide a copy of their application for an EPA identification number to the administrator.

§ 33-20-5. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

5.1. 40 CFR Part 262. -- The provisions of 40 CFR part 262 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

5.2. 40 CFR §262.10(g). -- The provisions of 40 CFR § 262.10.(g) shall be excepted from incorporation.

5.2.a. A person who generates a hazardous waste as defined by 40 CFR part 261 is subject to the compliance requirements and penalties prescribed in W. Va. Code, §22-18-1 et seq. if he or she does not comply with the requirements of this rule. This rule in no way abrogates the enforcement authority of the Resource Conservation and Recovery Act of 1976 § 3008.

5.2.b. All references to 40 CFR § 262.10(g) shall be deemed references to subsection 5.2 and the subdivisions herein, as appropriate.

5.3. 40 CFR Part 262, Subpart E. -- The provisions of 40 CFR part 262, subpart E -- Exports of Hazardous Waste are ~~excepted from incorporation hereby adopted and incorporated by reference. The substitution of terms in Subdivision 1.6.a. does not apply to the provisions of this subsection. and shall remain the provenance of the environmental protection agency and in~~ In addition to the requirements contained therein, any person subject to the provisions of subpart E shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by and within the time frames set forth in subpart E.

5.4. 40 CFR Part 262, Subpart F H. -- The provisions of 40 CFR part 262, subpart F H ~~Imports of Hazardous Waste are~~

~~excepted from incorporation --- Transfrontier Shipments of Hazardous Waste for Recovery within the OECD are hereby adopted and incorporated by reference. The substitution of terms in Subdivision 1.6.a. does not apply to the provisions of this subsection. and in~~ In addition to the requirements contained therein, any person subject to the provisions of subpart F H shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by and within the time frames set forth in subpart F H.

§ 33-20-6. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

6.1. 40 CFR Part 263. -- The provisions of 40 CFR part 263 are hereby adopted and incorporated by reference insofar as said regulations relate to the transportation of hazardous waste by air and water.

6.2. Note. -- The use of railroads for the transportation of hazardous waste is regulated by the West Virginia public service commission rules, "Rules and Regulations Governing the Transportation of Hazardous Waste by Rail", 150 CSR 11. The use of the state highways for the transportation of hazardous waste is regulated under the West Virginia division of highways, "Transportation of Hazardous Wastes Upon the Roads and Highways", 157 CSR 7.

§ 33-20-7. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

7.1. 45 CSR 25, office of air quality, -- The standards in Section 7 of this rule apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste except as otherwise provided by law. In addition to the standards in section 7 of this rule, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities", apply to management facilities which may emit hazardous waste or the constituents thereof to the atmosphere including incineration facilities except as otherwise provided by law. For purposes of section 7 of this rule, the following persons are considered to be incinerating hazardous waste:

7.1.a. Owners or operators of hazardous waste incinerators;
and

7.1.b. Owners or operators of boilers or industrial furnaces used to destroy wastes.

7.2. 40 CFR Part 264. -- The provisions of 40 CFR part 264 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

7.3. 40 CFR § 264.1 -- The provisions of 40 CFR § 264.1(g)(11)(iii) are amended to read as follows:

(iii) Thermostats and mercury containing lamps as described in 40 CFR § 273.4.

7.4. Required Receipt of Identical Notification. -- The provisions of 40 CFR section 264.12(a)(1) and (2) are retained by the environmental protection agency; however, the chief of the office of waste management must receive identical notification.

7.5. Releases from Solid Waste Management Unit. -- The provisions of 40 CFR part 264, subpart F -- Releases from solid waste management units are incorporated by reference with the following modifications, exceptions and additions.

7.5.a. For purposes of 40 CFR § 264.92, reference to the "regional administrator" shall be to the "environmental quality board." The environmental quality board establishes groundwater protection standards pursuant to the authority granted the board in W. Va. Code, § 22-12-4.

7.5.b. For purposes of 40 CFR § 264.94 and subparagraphs thereof, the environmental quality board rule on groundwater protection standards, 46 CSR 12 and the subparagraphs therein, shall apply as required pursuant to the authority granted the environmental quality board in W. Va. Code, § 22-12-4.

7.5.c. The provisions of 40 CFR § 264.99(g) are incorporated by reference with the following modifications:

7.5.c.1. The chief will specify in the facility permit the frequencies for collecting samples required under 40 CFR § 264.99(g). This frequency shall not be less than once every five years.

7.6. Financial Requirement. -- The provisions of 40 CFR part 264, subpart H -- Financial Requirements are adopted and incorporated by reference with the following modifications:

7.6.a. The provisions of 40 CFR §§ 264.149 and 264.150 are excepted from incorporation by reference.

7.7. Provisions Relating to Incinerators. -- The provisions of 40 CFR §§ 264.341, 264.342, 264.343, 264.344, 264.345 and 264.347 relating to incinerators are excepted from incorporation by

reference. Consult the rules of the air quality board regarding emissions from incinerators.

7.7.a. Consult the office of air quality, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."

7.8. 40 CFR Part 264, Subparts AA, BB, CC. -- The provisions of 40 CFR part 264, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the office of air quality regarding air emissions.

§ 33-20-8. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

8.1. 40 CFR Part 265. -- The provisions of 40 CFR part 265 are adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

8.2. 40 CFR § 265.1 -- The provisions of 40 CFR § 265.1(c)(14)(iii) are amended to read as follows:

(iii) Thermostats and mercury containing lamps as described in 40 CFR § 273.4.

8.3. 40 CFR §§ 265.12(a), 265.149 and 265.150. -- The provisions of 40 CFR §§ 265.12(a)(1) and (2), 265.149, and 265.150 are excepted from incorporation by reference. The chief of the office of waste management must receive identical notification.

8.4. 40 CFR §§ 265.345, 265.347, 265.352. -- The provisions of 40 CFR §§ 265.341, 265.345, 265.347 and 265.352 relating to incinerators are excepted from incorporation by reference. Consult the rules of the office of air quality regarding emissions from incinerators.

8.5. Thermal Treatment. -- The provisions of 40 CFR part 265, subpart P -- Thermal Treatment are incorporated by reference except for the provisions of 40 CFR § 265.375 and 40 CFR § 265.383 which are excepted from incorporation by reference. Consult the rules of the office of air quality regarding emissions from thermal treatment units.

8.6. 40 CFR Part 265 Subparts AA, BB, CC. -- The provisions of 40 CFR part 265, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the office of air quality regarding air emission standards for process vents and air emissions standards for equipment leaks, and air emission standards for tanks, surface impoundments and containers.

§ 33-20-9. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

9.1. 40 CFR Part 266. -- The provisions of 40 CFR part 266 are hereby adopted and incorporated by reference. Consult the rules of the office of air quality regarding Subpart H of this part.

§ 33-20-10. LAND DISPOSAL RESTRICTIONS.

10.1. 40 CFR Part 268. -- The provisions of 40 CFR part 268 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

10.2. 40 CFR § 268.1 -- The provisions of 40 CFR § 268.1(f)(3) are amended to read as follows:

(3) Thermostats and mercury containing lamps as described in 40 CFR § 273.4.

10.3. 40 CFR §§ 268.5, 268.6, 268.10 - .13, 268.42(b) and 268.44. -- The provisions of 40 CFR §§ 268.5, 268.6, 268.10, 268.11, 268.12, 268.13 and 268.42(b) are excepted from incorporation by reference.

10.4. Definition of Administrator in 40 CFR Part 268.40(b).
The term "administrator" in 40 CFR part 268.40(b) shall retain its meaning as defined in 260.10.

10.5. The provisions of federal register, volume 62, number 33, February 19, 1997, page 7502 (et seq) "land disposal restrictions - corrections of tables; treatment standards for hazardous waste and universal treatment standards" are hereby incorporated by reference.

10.6. The provisions of 40 CFR §§ 268.1, 268.4, 268.7 and 268.9 regarding Land Disposal Restrictions amended and finalized in 61 Federal Register 25998 (May 12, 1997) and 63 Federal Register 28555 (May 26, 1998) are hereby incorporated by reference.

§ 33-20-11. THE HAZARDOUS WASTE PERMIT PROGRAM.

~~**11.1. 40 CFR Part 270.** -- The provisions of 40 CFR part 270, 1995 ed., as amended by 61 FR 28508, June 5, 1996, are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section. All references in 40 CFR part 270 to 40 CFR part 124 shall be deemed to be references to the applicable provisions of subsections 11.5. through 11.15. of this rule. To the extent of any inconsistency with 40 CFR part 270, the specific provisions contained herein shall control.~~

~~11.2. 40 CFR § 270.1~~ The provisions of ~~40 CFR § 270.1(c)(2)(viii)(C)~~ are amended to read as follows:

~~(C) Thermostats and mercury containing lamps as described in 40 CFR § 273.4.~~

~~11.3. 40 CFR § 270.2 Definitions.~~

~~11.3.a. Definition of "RCRA Permit".~~ For purposes of this section, the term "RCRA permit" means "West Virginia hazardous waste management permit."

~~11.3.b. Definition of "Major Facility".~~ The term "major facility" shall have the meaning given at paragraph 2.1.a.1. of this rule.

~~11.4. Application Fees.~~

~~11.4.a.~~ Any person who applies for a permit for the construction or operation of a hazardous waste management facility, or both, 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. Persons required to obtain a permit by rule pursuant to these regulations are not required to pay a permit application fee.

~~11.4.b.~~ Such fee shall be determined by the schedule set forth in table 1 of this rule. If the cumulative total of application fees imposed under this section equals or exceeds fifty thousand dollars (\$50,000) then the person required to pay the fees may, at the person's option, elect to submit the fee payments in installments over a three year period. The installments submitted to the division of environmental protection may not be less frequent than annually and the amount submitted annually may not be less than one third of the total amount due.

~~11.4.c.~~ The chief reserves the right to promulgate rules establishing a permit renewal fee at a later date.

~~11.5. Draft Permits.~~

~~11.5.a.~~ Once an application is complete, the chief shall tentatively decide whether to prepare a draft permit or to deny the application.

~~11.5.b.~~ If the chief decides to prepare a draft permit, a draft permit shall be prepared that contains the following information:

~~11.5.b.1.~~ All conditions under ~~40 CFR §§ 270.30 and 270.32.~~

~~11.5.b.2. All compliance schedules under 40 CFR § 270.33;~~

~~11.5.b.3. All monitoring requirements under 40 CFR § 270.31; and~~

~~11.5.b.4. Standards for treatment, storage, and disposal and other permit conditions under 40 CFR part 270.~~

~~11.5.c. A fact sheet prepared in accordance with subsection 11.6 of this rule shall accompany the draft permit. The fact sheet shall be based on the "administrative record" as defined in subsection 11.15 of this rule.~~

~~11.5.d. Any additional information considered to be necessary or proper.~~

~~11.5.e. If the chief 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 shall be accompanied with a statement of basis. If the chief'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 under subsection 11.5 of this rule.~~

~~11.6. Fact Sheet.~~

~~11.6.a. A fact sheet shall be prepared by the chief for every draft permit for each hazardous waste management facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The chief shall send this fact sheet to the applicant and, upon request, to any other person.~~

~~11.6.b. The fact sheet shall include, when applicable:~~

~~11.6.b.1. A brief description of the type of facility or activity which is the subject of the draft permit;~~

~~11.6.b.2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged. A description of the type of wastes, fluids, or pollutants shall include, but not limited to, the characteristics of the waste materials and the potential effects on public health and the environment;~~

~~11.6.b.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or rule provisions;~~

~~11.6.b.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;~~

~~11.6.b.5. A description of the procedures for reaching a final decision on the draft permit including:~~

~~11.6.b.5.A. The beginning and ending dates of the comment period and the address where comments will be received;~~

~~11.6.b.5.B. Procedures for requesting a hearing and the nature of that hearing; and~~

~~11.6.b.5.C. Any other procedures by which the public may participate in the final decision; and~~

~~11.6.b.6. Name and telephone number of a person to contact for additional information.~~

11.7. Public Access to Information.

~~11.7.a. Any records, reports, or information and any permit, permit applications, and related documentation within the chief's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the chief 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 chief shall consider, treat, and protect such records as confidential.~~

~~11.7.b. It shall be the responsibility of the person claiming any information as confidential under the provisions of subsection 11.7. of this rule to clearly mark each page containing such information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.~~

~~11.7.c. Any document submitted to the chief which contains information for which claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the chief. The document shall be submitted in two (2) separate parts. The first part shall contain all information which is not deemed by the person preparing the report as confidential and shall include appropriate cross references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.~~

~~11.7.d. No information shall be protected as confidential information by the chief unless it is submitted in accordance with the provisions of subdivision 11.7.c. of this rule and no~~

information which is submitted in accordance with the provisions of subdivision 11.7.c. of this rule shall be afforded protection as confidential information unless the chief finds that such protection is necessary to protect trade secrets. The person who submits information claimed to be confidential shall receive written notice from the chief as to whether the information has been accepted as confidential or not.

~~11.7.e.~~ All information which meets the tests of subdivision 11.7.d. of this rule shall be marked with the term "ACCEPTED" and shall be protected as confidential information. If said person fails to satisfactorily demonstrate to the chief that such information in the form presented to him meets the criteria of subdivision 11.7.d. of this rule, the chief shall mark the information "REJECTED" and promptly return such information to the person submitting such information. The chief shall retain a copy of such information for the administrative record.

~~11.7.f.~~ Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during situations declared to be emergencies by the chief or his designee.

~~11.7.g.~~ Nothing in subsection 11.7. of this rule may be construed as limiting the disclosure of information by the division to any officer, employee, or authorized representative of the State or federal government concerned with effecting the purposes of subsection 11.7. of this rule.

~~11.7.h.~~ Persons interested in obtaining information pursuant to subsection 11.7. of this rule should submit a request in accordance with the environmental quality board rule 46 CSR 8.

~~11.7.i.~~ Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

~~11.8. Public Participation in Permit Process.~~

~~11.8.a.~~ Public notice shall be given that the following actions have occurred:

~~11.8.a.1.~~ A draft permit has been prepared; or

~~11.8.a.2.~~ A hearing has been scheduled.

~~11.8.b.~~ Timing. Public notice of the preparation of a draft permit required under subsection 11.8. of this rule shall allow at least forty five (45) days for public comment.

~~11.8.c.~~ Public notice of a public hearing shall be given at least thirty (30) days before the hearing.

~~11.8.d.~~ Methods. Public notice of activities described in subsection 11.8. of this rule shall be given by the following methods:

~~11.8.e.~~ By mailing a copy of the notice to the following persons:

~~11.8.e.1.~~ The applicant;

~~11.8.e.2.~~ Any federal or state agency which the chief knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the facility or activity including, but not limited to, the U.S. environmental protection agency and the U.S. army corps of engineers;

~~11.8.e.3.~~ Each state agency having authority under state law with responsibility to the construction or operation of such facility;

~~11.8.e.4.~~ Any unit of local government having jurisdiction over the area where the facility is proposed to be located;

~~11.8.e.5.~~ Other appropriate federal or state agencies including, but not limited to, the U.S. fish and wildlife service, the U.S. forest service, the West Virginia department of culture and history, the West Virginia department of health, other governmental authorities including any affected states, and the advisory council on historic preservation (Suite 430, 1522 K Street, N.W., Washington, D.C. 20005); and

~~11.8.e.6.~~ All persons to whom a public notice is sent;

~~11.8.e.7.~~ Persons on the mailing list developed by:

~~11.8.e.7.A.~~ Including those who request in writing to be on the list.

~~11.8.e.7.B.~~ Soliciting persons for "area lists" from participants in past permit proceedings in that area.

~~11.8.e.7.C.~~ Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in appropriate publications of the state. The chief may update the mailing list by requesting written indication of continued interest from those listed. The chief may delete from the list the name of any person who fails to respond to such a request.

~~11.8.e.8.~~ By publishing the public notice, in the form of a class I legal advertisement in a qualified daily or weekly newspaper of general circulation and broadcasting the public notice over local radio stations in the area in which the facility is or is proposed to be located. A qualified daily or weekly newspaper is, for the purpose of subsection 11.8. of this rule, any newspaper which meets the provisions of W. Va. Code, § 59-3-1(b).

~~11.8.e.9.~~ By any other method reasonably calculated to give actual notice of the action in question to the person potentially affected by it, including press releases or any other forum of medium to elicit public participation.

~~11.8.e.10.~~ Any person otherwise entitled to receive notice under subsection 11.8. of this rule may waive the right to receive notice for any classes and categories of permits.

~~11.9. Personal Notification by Facility Owner or Operator to Individual Residents.~~

~~11.9.a.~~ Following the submittal of a Part B application which is deemed complete by the chief, and before the public notice of the preparation of a draft permit as required under subsection 11.8. of this rule, the facility owner or operator shall serve notice upon the residence of all persons residing within one-quarter mile of the boundaries of the specific hazardous waste management facility.

~~11.9.b.~~ Service of such notice as herein provided shall be made by delivering a copy to the residence of each person upon whom service must be made or by mailing it by registered mail to the last known address of each person or by such other reasonable means as the chief and the owner or operator agree will provide an effective and practical method of notification.

~~11.9.c.~~ Following completion of service of notice as set forth herein, and no later than the date of public notice required in subsection 11.8. of this rule, the owner or operator shall certify in writing to the chief that service has been completed, describe the method of service, and provide a copy of the written notice employed to the chief.

~~11.9.d.~~ The personal notice required herein shall be a written notice containing at a minimum:

~~11.9.d.1.~~ The name and address of the permit applicant;

~~11.9.d.2.~~ The name, location, and type of hazardous waste management facility for which the application has been submitted;

~~11.9.d.3.~~ A statement advising the recipients of the notice that a complete application for permit has been submitted; and

~~11.9.d.4.~~ A statement advising the recipients of personal notice that an opportunity for public comment upon the application and draft permit will be made available to them upon completion of division review of the application and that such notice will be published as a legal advertisement in a local newspaper and broadcast over the radio.

~~11.10. Contents of Public Notice.~~

~~11.10.a.~~ All public notices issued under subsection 11.8. of this rule shall contain the following information:

~~11.10.a.1.~~ Name and address of the office processing the permit action for which notice is being given;

~~11.10.a.2.~~ Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

~~11.10.a.3.~~ A brief description of the business conducted at the facility described in the permit application or the draft permit;

~~11.10.a.4.~~ The name, address, and telephone number of a person from whom interested persons may obtain further information including copies of the draft permit or fact sheet, and the application; and

~~11.10.a.5.~~ A brief description of the comment procedures required by subsections 11.11. and 11.12. of this rule and the time and place of any hearing that will be held, including a statement of procedures to request a hearing unless already scheduled, and other procedures by which the public may participate in the final permit decision.

~~11.10.b.~~ In addition to the general public notice described in subdivision 11.10.a. of this rule, the public notice of a hearing shall contain the following information:

~~11.10.b.1.~~ Reference to the date of previous public notices relating to the permit;

~~11.10.b.2.~~ Date, time and place of the hearing;

~~11.10.b.3.~~ A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

~~11.10.b.4.~~ Name and address of the nearest district office where the file will be available for inspection.

~~11.11.~~ **Public Comment and Request for Public Hearings.** During the public comment period provided that 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 subsections 11.13. and 11.14. of this rule.

~~11.12.~~ **Public Hearings.**

~~11.12.a.~~ The chief 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(s). The chief may also hold a public hearing at his discretion whenever, for instance, such hearing may clarify one or more issues involved in the permit decision.

~~11.12.b.~~ The chief shall hold a public hearing upon receiving written notice of opposition to a draft permit and a request for public hearing within forty five (45) days of the public notice. Whenever possible the chief shall schedule a hearing under subsection 11.12. of this rule at a location convenient to the nearest such proposed facility. Public notice of the hearing shall be given as specified in subsection 11.8. of this rule.

~~11.13.~~ **Reopening of the Public Comment Period.**

~~11.13.a.~~ If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the chief may take one or more of the following actions:

~~11.13.a.1.~~ Prepare a new draft permit, appropriately modified, under subsection 11.5. of this rule.

~~11.13.a.2.~~ Prepare a revised fact sheet under subsection 11.6. of this rule and reopen the comment period.

~~11.13.a.3.~~ Reopen or extend the comment period under subsection 11.11. of this rule to give interested persons an opportunity to comment on the information or arguments submitted.

~~11.13.b.~~ Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under subsection 11.8. of this rule shall define the scope of the reopening.

~~11.14. Response to Comments.~~

~~11.14.a. At the time that any final permit is issued, the chief shall issue a response to comments. This response shall be in writing and shall:~~

~~11.14.a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit and the reasons for change; and~~

~~11.14.a.2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or hearing.~~

~~11.14.b. The response to comments shall be delivered to any person who commented or any person who requests the same.~~

~~11.15. Administrative Record~~

~~11.15.a. The provisions of a draft permit prepared under subsection 11.5. of this rule shall be based on the administrative records consisting of:~~

~~(1) The application and any supporting data furnished by the applicant;~~

~~(2) The draft permit or notice of intent to deny the application or to terminate the permit;~~

~~(3) The fact sheet;~~

~~(4) All documents cited in the fact sheet; and~~

~~(5) Other documents contained in the supporting file for the draft permit.~~

~~11.15.b. The chief shall base final permit decisions on the administrative record consisting of:~~

~~(1) Administrative record for the draft permit;~~

~~(2) All comments received during the public comment period provided under subsection 11.8 of this rule (including any extension or reopening under subsection 11.13 of this rule);~~

~~(3) The tape or transcript of any hearing(s) held under subsection 11.12 of this rule;~~

~~(4) Any written material submitted at such hearing;~~

~~(5) The response to comments required by subsection 11.14 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;~~

~~(6) Other documents contained in the supporting file for the permit;~~

~~(7) An addendum to the fact sheet if needed; and~~

~~(8) The final permit.~~

~~11.15.c. The administrative record shall be complete on the date the final permit is issued.~~

~~11.15.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 11.15.a. and 11.15.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.~~

~~11.16. 40 CFR § 270.12. 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, § 22-18-12 and subsection 11.7. of this rule.~~

~~11.17. 40 CFR § 270.24. The provisions of 40 CFR § 270.24 are excepted from incorporation by reference. Consult the rules of the office of air quality regarding emissions from process vents.~~

~~11.18. 40 CFR §§ 270.60(b) and 270.64. The provision of 40 CFR §§ 270.60(b) and 270.64 are excepted from incorporation by reference. Consult the rules of the office of water resources and the environmental quality board regarding the requirements for underground injection wells.~~

11.1. 40 CFR Part 270. -- The provisions of the 40 CFR part 270 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

11.2. 40 CFR §270.1. -- The provisions of 40 CFR §270.1(c)(2)(viii)(C) are amended to read as follows:

(C) Thermostats and mercury containing lamps as described in 40 CFR §273.4.

11.3. 40 CFR 270.2 Definitions.

11.3.a. Definition of "RCRA permit". -- For purposes of this section, the term "RCRA permit" means "West Virginia hazardous waste management permit". The following additional requirements shall apply to obtain a hazardous waste management permit in West Virginia. All references in 40 CFR part 270 to 40 CFR part 124 shall be deemed to be references to the applicable provisions of subsections 11.4, 11.5, through 11.14, 11.18 of this rule. To the extent of any inconsistency with 40 CFR part 270, the specific provisions contained herein shall control.

11.4. Application Fees.

11.4.a. Any person who applies for a permit for the construction or operation of a hazardous waste management facility, or both, 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. Persons required to obtain a permit-by-rule pursuant to these regulations are not required to pay a permit application fee.

11.4.b. Such fee shall be determined by the schedule set forth in table 1 of this rule. If the cumulative total of application fees imposed under this section equals or exceeds fifty thousand dollars (\$50,000) then the person required to pay the fees may, at the person's option, elect to submit the fee payments in installments over a three year period. The installments submitted to the division of environmental protection may not be less frequent than annually and the amount submitted annually may not be less than one-third of the total amount due.

11.4.c. The chief reserves the right to promulgate rules establishing a permit renewal fee at a later date.

11.5. Pre-application Public Meeting and Notice

11.5.a. Applicability. The requirements of this section 11.5. 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.

11.5.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.

11.5.c. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection 11.5.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).

11.5.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.

11.5.d.1. The applicant shall provide public notice in all of the following forms:

11.5.d.1.A. A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in subsection 11.5.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 chief shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the chief determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

11.5.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 11.5.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.

11.5.d.1.C. A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in subsection 11.5.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 chief.

11.5.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 chief 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.

11.5.d.2. The notices required under subsection 11.5.d.1. of this section must include:

11.5.d.2.A. The date, time, and location of the meeting;

11.5.d.2.B. A brief description of the purpose of the meeting;

11.5.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;

11.5.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

11.5.d.2.E. The name, address, and telephone number of a contact person for the applicant.

11.6 Public Notice Requirements at the Application Stage

11.6.a. Applicability. The requirements of this section 11.6. 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.

11.6.b. Notification. The chief shall provide public notice as required in this section 11.6. when a Part B permit application has been submitted. The chief shall provide public notice to:

11.6.b.1. The applicant;

11.6.b.2. All persons on a mailing list developed under 11.12.d.1.D.; and

11.6.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 chief and is available for review.

11.6.b.4. Any person otherwise entitled to receive notice under subsection 11.6.b. of this rule may waive the right to receive notice for any classes and categories of permits.

11.6.c. The notice shall be published within a reasonable period of time after the application is received by the chief. The notice must include:

11.6.c.1. The name and telephone number of the applicant's contact person;

11.6.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;

11.6.c.3. An address to which people can write in order to be put on the facility mailing list;

11.6.c.4. The location where copies of the permit application and any supporting documents can be viewed and copied;

11.6.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

11.6.c.6. The date that the application was submitted.

11.6.d. Concurrent with the notice required under section 11.6.b. of this section, the chief 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.

11.7. Information Repository

11.7.a. Applicability. The requirements of this section apply to all applications seeking West Virginia hazardous waste management permits for hazardous waste management units.

11.7.b. The chief may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the chief 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 chief determines, at any time after submittal of a permit application, that there is a need for a repository, then the chief shall notify the facility that it must establish and maintain an information repository.

11.7.c. The information repository shall contain all documents, reports, data, and information deemed necessary by the chief to fulfill the purposes for which the repository is established. The chief shall have the discretion to limit the contents of the repository.

11.7.d. The information repository shall be located and maintained at a site chosen by the facility. If the chief 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 chief shall specify a more appropriate site.

11.7.e. The chief shall specify requirements for informing the public about the information repository. At a minimum, the chief shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

11.7.f. The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the chief. The chief may close the repository at his or her discretion, based on the factors in 11.7.b. of this section.

11.8. Application for a Permit

11.8.a. Any person who requires a permit under this rule shall complete, sign, and submit to the chief 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 chief 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.

11.8.b. The chief shall review for completeness every application. Each application submitted by a new hazardous waste management, should be reviewed for completeness by the chief 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 chief shall notify the applicant in writing whether the application is complete. If the application is incomplete, the chief shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the chief shall specify in the notice of deficiency a date for submitting the necessary information. The chief shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the chief may request additional information from the applicant but only when necessary to clarify, modify or supplement previously submitted material. Request for such additional information will not render an application incomplete.

11.8.b-11.8.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 WV Code §22-18-1 et seq.

11.8.c-11.8.d. If the chief 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.

~~11.8.d.11.8.e.~~ The effective date of an application is the date on which the chief notifies the applicant that the application is complete as provided for in ~~11.7.b.~~ 11.8.b. of this section.

~~11.8.e.11.8.f.~~ For each application the chief 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 chief intends to:

~~11.8.e.1.11.8.f.1.~~ Prepare a draft permit;

~~11.8.e.2.11.8.f.2.~~ Give public notice;

~~11.8.e.3.11.8.f.3.~~ Complete the public comment period, including any public hearing;

~~11.8.e.4.11.8.f.4.~~ Issue a final permit.

11.9 Modification, Revocation and Reissuance, or Termination of Permits

11.9.a. Permits may be modified, revoked and reissued, or terminated either at the request of an interested person (including the permittee) or upon the chief'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.

11.9.b. If the chief 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 chief may be appealed to the Environmental Quality Board in accordance with section 15 of this rule.

11.9.b.1. If the chief 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 ~~11.9~~ 11.10. incorporating the proposed changes. The chief 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 chief shall require the submission of a new application.

11.9.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.

11.9.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 section.

11.9.c. If the chief 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 11.10.

11.9.d. The provisions of 40 CFR § 270.42(j) and 40 CFR 270.72(b)(8) regarding permit modification for hazardous combustion units for technology changes needed to meet standards under 40 CFR Part 63 Subpart EEE as amended and finalized in 63 Federal Register 33781 (June 19, 1998). Consult the rules of the office of air quality.

11.10. Draft Permits.

11.10.a. Once an application is complete, the chief shall tentatively decide whether to prepare a draft permit or to deny the application.

11.10.b. If the chief 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 chief'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.

11.10.c. If the chief tentatively decides to issue a permit, he or she shall prepare a draft permit that contains the following information:

11.10.c.1. All conditions under 40 CFR §§270.30 and 270.32;

11.10.c.2. All compliance schedules under 40 CFR § 270.33;

11.10.c.3. All monitoring requirements under 40 CFR §270.31; and,

11.10.c.4. Standards for treatment, storage, and/or disposal and other permit conditions under 40 CFR §270.30.

11.10.d. All draft permits prepared by the chief under this section shall be accompanied by a fact sheet and shall be based on the administrative record, publicly noticed and made available for public comment.

11.11 Fact Sheet

11.11.a. A fact sheet shall be prepared for every draft permit for a major hazardous waste management facility, or for each draft permit which the chief 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 chief shall send the fact sheet to the applicant and, on request, to any other person.

11.11.b. The fact sheet shall include when applicable:

11.11.b.1. A brief description of the type of facility or activity which is the subject of the draft permit;

11.11.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;

11.11.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;

11.11.b.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

11.11.b.5. A description for reaching a final decision on a draft permit including;

11.11.b.5.A. The beginning and the ending dates of the comment period and the address where comments will be received;

11.11.b.5.B. Procedures for requesting a hearing and the nature of that hearing; and

11.11.b.5.C. Any other procedures by which the public may participate in the final decision.

11.11.b.6. Name and telephone number of a person to contact for additional information.

11.12. Public Notice of Permit Actions and Public Comment Period

11.12.a Scope. The chief shall give public notice if the following actions have occurred:

11.12.a.1. A draft permit has been prepared.

11.12.a.2. A hearing has been scheduled.

11.12.b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under section ~~11.10~~ 11.9. Written notice of that denial shall be given to the requester and to the permittee.

11.12.c. Timing. Public notice of the preparation of a draft permit (including a Notice of Intent to Deny a Permit Application) required under section 11.12.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.)

11.12.d. Public notice of activities described in section 11.12.a. of this section shall be given by the following methods:

11.12.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);

11.12.d.1.A. The applicant;

11.12.d.1.B. Any other agency which the chief 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, 42 33 U.S.C. §1344, or sludge management permit for the same facility or activity;

11.12.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.

11.12.d.1.D. Persons on a mailing list developed by:

(a)11.12.d.1.D.i. Including those who request in writing to be on the list;

(b)11.12.d.1.D.ii. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(c)11.12.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 chief may update the mailing lists from time to time by requesting written indications of continued interest from those listed. The chief may delete from the lists the name of any person who fails to respond to such request.)

11.12.d.1.D.i. 11.12.d.1.E To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

11.12.d.1.D.ii. 11.12.d.1.F To each state agency having any authority under state law with respect to the construction or operation of such facility.

11.12.d.2. Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

11.12.d.3. In a manner constituting legal notice to the public under state laws; and

11.12.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.

11.12.e. All public notices issued under this section shall contain the following minimum information:

11.12.e.1. Name and address of the office processing the permit action for which notice is being given;

11.12.e.2. Name and address of the permittee or the permit applicant and, if different, of the facility or activity regulated by the permit.

11.12.e.3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

11.12.e.4. Name, address and telephone number of a person from who interested persons may obtain further information, including copies of the draft permit, fact sheet and the application; and

11.12.e.5. A brief description of the comment procedures required by sections 11.13. and 11.14. 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.

11.12.e.6. The location of the administrative record, the times that which the record will be open for public inspection;

11.12.e.7. Any additional information considered necessary or proper.

11.12.f. Public notices for hearings. In addition to the general public notice described in section 11.12.e. of this section, the public notice of a hearing shall contain the following information:

11.12.f.1. Reference to the date of previous public notices relating to the permit;

11.12.f.1.A. Date, time, and place of the hearing;

11.12.f.1.B. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

11.12.g. In addition to the general public notice described in section 11.12.e. of this section, all persons identified in section 11.12.d.1.A, 11.12.d.1.B, and 11.12.d.1.C of this section shall be mailed a copy of the fact sheet, the permit application and the draft permit, as applicable.

11.13. Public Comments and Requests for Public Hearings

During the public comment period provided under section 11.12., 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 11.17.

11.14 Public Hearings

11.14.a. The chief 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.

11.14.b. The chief 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.

11.14.c. The chief 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 11.12.c.; whenever possible the chief shall schedule a hearing under this section at a location in convenient to the nearest population center to the proposed facility.

~~11.14.c.1~~-11.14.d. Public notice of the hearing shall be given as specified in section 11.12.

~~11.14.d~~-11.14.e. Whenever a public hearing will be held the chief shall designate a presiding officer for the hearings who shall be responsible for its scheduling and orderly conduct.

~~11.14.e~~-11.14.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 11.12. 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.

~~11.14.f~~-11.14.g. A tape recording or written transcript of the hearing shall be made available to the public.

11.15. Reopening of the Public Comment Period

11.15.a. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the chief may take one or more of the following actions:

11.15.a.1. Prepare a new draft permit, appropriately modified, under Section ~~11.9~~-11.10. of these rules.

11.15.a.2. Prepare a revised fact sheet under Section 11.11. of this rule and reopen the comment period.

11.15.a.3. Reopen or extend the comment period under Section ~~11.15~~-11.12. of this rule to give interested persons an opportunity to comment on the information or arguments submitted.

11.15.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 11.12. of this rule shall define the scope of the reopening.

11.15.c. Public notice of any of the above actions shall be issued under section 11.12 of this rule.

11.16. Issuance and Effective Date of Permit

11.16.a. After the close of the public comment period on a draft permit the chief shall issue a final permit decision. The chief 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.

11.16.b. A final permit decision shall become effective thirty (30) days after the service of Notice of Decision unless:

11.16.b.1. A later effective date is specified in the decision; or

11.16.b.2. Review is requested or evidentiary hearing is requested; or

11.16.b.3. No comments requested change in the draft permit, in which case the permit shall become effective immediately upon issuance.

11.17. Response to Comments

11.17.a. At the time that any final permit decision is issued, the chief shall issue a response to comments. This response shall:

11.17.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

11.17.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.

11.17.b. The response to comments shall be available to the public.

11.18. Administrative Record

11.18.a. The provisions of a draft permit prepared under subsection 11.10. of this rule shall be based on the administrative records consisting of:

11.18.a.1. The application and any supporting data furnished by the applicant;

11.18.a.2. The draft permit or notice of intent to deny the application or to terminate the permit;

11.18.a.3. The fact sheet;

11.18.a.4. All documents cited in the fact sheet; and

11.18.a.5. Other documents contained in the supporting file for the draft permit.

11.18.b. The chief shall base final permit decisions on the administrative record consisting of:

11.18.b.1. Administrative record for the draft permit;

11.18.b.2. All comments received during the public comment period provided under subsection 11.12. of this rule (including any extension or reopening under subsection 11.15. of this rule);

11.18.b.3. The tape or transcript of any hearing(s) held under subsection 11.14. of this rule;

11.18.b.4. Any written material submitted at such hearing;

11.18.b.5. The response to comments required by subsection 11.17. 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;

11.18.b.6. Other documents contained in the supporting file for the permit;

11.18.b.7. An addendum to the fact sheet if needed; and

11.18.b.8. The final permit.

11.18.c. The administrative record shall be complete on the date the final permit is issued.

11.18.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 11.18.a. and 11.18.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.

11.19. Public Access to Information.

11.19.a. Any records, reports, or information and any permit, permit applications, and related documentation within the chief's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the chief 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 chief shall consider, treat, and protect such records as confidential.

11.19.b. It shall be the responsibility of the person claiming any information as confidential under the provisions of this subsection of this rule to clearly mark each page containing such information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

11.19.c. Any document submitted to the chief which contains information for which claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the chief. The document shall be submitted in two (2) separate parts. The first part shall contain all information which is not deemed by the person preparing the report as confidential and shall include appropriate cross-references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.

11.19.d. No information shall be protected as confidential information by the chief unless it is submitted in accordance with the provisions of subdivision 11.19.c. of this rule and no information which is submitted in accordance with the provision of subdivision 11.19.c. of this rule shall be afforded protection as confidential information unless the chief finds that such protection is necessary to protect trade secrets. The person who submits information claimed to be confidential shall receive written notice from the chief as to whether the information has been accepted as confidential or not.

11.19.e. All information which meets the tests of subdivision 11.19.d. of this rule shall be marked with the term "ACCEPTED" and shall be protected as confidential information. If said person fails to satisfactorily demonstrate to the chief that such information in the form presented to him meets the criteria of subdivision 11.19.d. of this rule, the chief shall mark the

information "REJECTED" and promptly returned such information to the person submitting such information. The chief shall retain a copy of such information for reference.

11.19.f. Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during situations declared to be emergencies by the chief or his designee.

11.19.g. Nothing in subsection 11.19. of this rule may be construed as limiting the disclosure of information by the division to any officer, employee, or authorized representative of the State or federal government concerned with effecting the purposes of this subsection.

11.19.h. Persons interested in obtaining information pursuant to this subsection should submit a request in accordance with the environmental quality board rule 46 CSR 8.

11.20. 40 CFR §270.12. The provisions of 40 CFR §270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provision of W. Va. Code, §22-18-12 and subsection ~~11.17.~~ 11.19. of this rule.

11.21. 40 CFR §270.24. The provisions of 40 CFR §270.24 are excepted from incorporation by reference. Consult the rules of the office of air quality regarding emissions form process vents.

11.22. 40 CFR §§270.60(b) and 270.64. The provision of 40 CFR §§270.60(b) and 270.64 are excepted from incorporation by reference. Consult the rules of the office of water resources and the environmental quality board regarding the requirements for underground injection wells.

§ 33-20-12. DEED AND LEASE DISCLOSURE; NOTICE IN DEED TO PROPERTY.

12.1. Recording Requirement. -- The owner of the property on which a hazardous waste management facility is located must record, in accordance with state law, a notation on the deed or lease to the facility property -- or on some other instrument that is normally examined during title search -- that will in perpetuity notify any potential purchaser of the property that:

12.1.a. The land has been used to manage hazardous wastes; and

12.1.b. Its use is restricted under 40 CFR § 264.117(c).

12.2. Upon actual transfer of property which contains hazardous wastes that have been stored, treated, or disposed of, the previous owner shall notify the chief in writing of such transfer.

12.3. Other Requirements. -- Nothing contained in this section of this rule shall relieve any person from complying with the requirements on deed and lease disclosures set forth in W. Va. Code, § 22-18-21.

§ 33-20-13. UNIVERSAL WASTE RULE.

13.1. 40 CFR Part 273. -- The provisions of 40 CFR part 273 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

13.2. In addition to pesticides, batteries, and thermostats covered by 40 CFR part 273, mercury containing lamps, commonly known as fluorescent light bulbs, are also covered under part 273

13.3. 40 CFR § 273.1 -- The provisions of 40 CFR § 273.1(a)(3) are amended to read as follows:

(3) Thermostats and mercury containing lamps as described in 40 CFR § 273.4.

13.4. 40 CFR § 273.4 -- Applicability - mercury thermostats and mercury containing lamps -- The provisions of 40 CFR § 273.4 are amended by adding thereto a new subdivision designated subdivision (d) to read as follows:

(d) Whenever the phrase "mercury thermostats" or "thermostats" is used in 40 CFR part 273, the phrase is to be read to include mercury containing lamps except where such language refers to mercury containing ampules. Mercury containing lamps shall be managed as universal waste to the same extent as mercury thermostats if the mercury containing lamp is a hazardous waste because it exhibits one or more of the characteristics identified in 40 CFR part 261, subpart C. Mercury containing lamps must be handled to prevent breakage, leakage or spillage of the hazardous constituents. In the event that the hazardous constituents are released, the handler must manage the material in accordance with all applicable universal waste remediation procedures and determine whether or not it is subject to the requirements of 40 CFR Parts 260 through 272.

13.5. 40 CFR § 273.6 -- Definitions -- The provisions of 40 CFR § 273.6 are amended to read as follows:

13.5.a. "Mercury containing lamp" means an electric lamp in which mercury is purposely introduced by the manufacturer for the operation of the lamp. Mercury containing lamps commonly include fluorescent lamps.

13.5.b. "Universal Waste" means any of the following hazardous wastes that are managed under the universal waste requirements of 40 CFR part 273:

- (1) Batteries as described in 40 CFR § 273.2;
- (2) Pesticides as described in 40 CFR § 273.3; and
- (3) Thermostats and mercury containing lamps as described in 40 CFR § 273.4.

13.6. **40 CFR §§ 273.20, 273.40, 273.56** -- Exports are ~~excepted from incorporation hereby adopted and incorporated by reference, and shall remain the provenance of the environmental protection agency and in~~ The substitution of terms in Subdivision 1.6.a. does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of 40 CFR part 273 shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by part 40 CFR 273.

13.7. **40 CFR § 273.70** -- The provisions of 40 CFR 273.70 Imports are excepted from incorporation by reference to the extent jurisdiction is limited to West Virginia. Persons managing universal waste that is imported to West Virginia are subject to the requirements of this rule.

13.8. **40 CFR §§ 273.80 and 273.81** -- The provisions of 40 CFR § 273.80 and 273.81 are excepted from incorporation by reference. Consult the provisions of subdivision 2.5.d of this rule to petition to include a waste as a universal waste.

§ 33-20-14. STANDARDS FOR THE MANAGEMENT OF USED OIL.

14.1. **40 CFR Part 279.** -- The provisions of 40 CFR part 279 are hereby adopted and incorporated by reference with the exception contained in this section. Consult the rules of the office of air quality regarding the burning of used oil.

14.2. **40 CFR § 279.82(b).** -- The term EPA at 40 CFR § 279.82(b) shall have the meaning of United States environmental protection agency.

14.3. **Effective Date of Section 14.** -- Notwithstanding the effective date of this rule, the effective date of the provisions of this section shall be July 1, 1995.

§ 33-20-15. APPEAL RIGHTS.

15.1. Any person aggrieved or adversely affected by the failure or refusal of the director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the

terms and conditions of a permit granted by the director under the provisions of this rule, may appeal to the environmental quality board in accordance with the provisions of article 1, chapter twenty-two-b (§22B-1-1 et seq) of the West Virginia Code.

**TABLE 1
PERMIT APPLICATION FEE SCHEDULE**

STORAGE

EPA CODE ACTIVITY	FEE	FEE
S01 Container	<100 tons capacity \$2,500.00	≥100 tons capacity \$3,750.00
S02 Tank	<100 tons capacity \$2,500.00	≥100 tons capacity \$3,750.00
S04 Surface Impoundment	<1,000 tons capacity \$10,000.00	≥1,000 tons capacity \$12,500.00
S05 Drip Pad	\$2,500.00	
S03 Waste Pile	<100 tons capacity \$5,000.00	≥100 tons capacity \$7,500.00
S06 Waste Pile (Containment Bldg.)	<100 tons capacity \$5,000.00	≥100 tons capacity \$7,500.00

DISPOSAL

EPA CODE ACTIVITY	FEE	FEE
D80 Landfill	<1,000 tons/year \$15,000.00	≥1,000 tons/year \$25,000.00
D81 Land Application	<1,000 tons/year \$15,000.00	≥1,000 tons/year \$25,000.00
D83 Surface Impoundment	<1,000 tons/year \$15,000.00	≥1,000 tons/year \$25,000.00

**TABLE 1
PERMIT APPLICATION FEE SCHEDULE
(CONTINUED)**

TREATMENT

EPA CODE ACTIVITY	FEE	FEE
T01 Tank	<100 tons capacity \$2,500.00	≥100 tons capacity \$3,750.00
T02 Surface Impoundment	<1,000 tons/year \$10,000.00	≥1,000 tons/year \$12,500.00
T03 Incinerator	<1,000 tons/year \$5,000.00	≥1,000 tons/year \$7,500.00
T80 thru T93 Boiler/Industrial Furnace	<1,000 tons/year \$5,000.00	≥1,000 tons/year \$7,500.00
T04 Other	\$5,000.00	\$7,500.00
T-94 Containment Bldg. Treatment	\$5,000.00	\$7,500.00

EMERGENCY PERMITS

EPA CODE ACTIVITY	FEE
State and Federal	Nil
Others	\$500.00

**TABLE 1
PERMIT APPLICATION FEE SCHEDULE
(CONTINUED)**

MISCELLANEOUS

EPA CODE ACTIVITY	FEE
Permit Modification under 40 CFR, 270.42 (Class I, II, III)	\$ 1,250.00
Permit Modification under 40 CFR, 270.42 (Class I)	\$ 500.00
Permit Modification under 40 CFR, 270.42 (Class II and III)	\$ 1,250.00
Modification under 40 CFR, 270.41	\$ 2,500.00
Post-Closure Care Permit	\$15,000.00
Closure Plans	\$ 1,500.00



DIVISION OF ENVIRONMENTAL PROTECTION
1356 Hansford Street
Charleston, WV 25301-1401

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
DIRECTOR

July 30, 1998

TO: Mike Dorsey

FROM: Bill Rheinlander *BR*

RE: Public hearing for hazardous waste rule changes

The following people from outside the agency attended the July 22 public hearing: Mike McThomas of Robinson & McElwee and Gale Lea of Jackson & Kelly. No one made verbal comments for the record. Mike McThomas submitted a written comment on behalf of the West Virginia Manufacturers Association.

Public Information Office
Telephone: (304) 558-4253 Fax: (304) 558-4530 TDD: (800) 422-5700

**COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON THE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
HAZARDOUS WASTE MANAGEMENT REGULATIONS
33 CSR 20**

July 22, 1998

COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON THE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
HAZARDOUS WASTE MANAGEMENT REGULATIONS
33 CSR 20

July 22, 1998

I. INTRODUCTION

The Office of Waste Management ("OWM"), Division of Environmental Protection proposed for promulgation revisions to the Hazardous Waste Management Regulations, 33 CSR 20, on June 22, 1998. The public comment period expires on July 22, 1998. These comments are offered in accordance with the public notice afforded on the proposal of these rules.

The West Virginia Manufacturers Association ("WVMA") is an organization comprised of approximately 200 member companies engaged in a wide variety of manufacturing activities throughout the state. The WVMA has regularly filed comments on the Hazardous Waste Management Rules since the inception of the program, and because WVMA members may be affected by changes in the rules, the WVMA offers the following comments and recommendations..

II. GENERAL COMMENTS

A. Incorporation by Reference Date

The WVMA continues to support the incorporation of the federal rules by reference as required by W.Va. Code § 22-1-3. Incorporation by reference creates consistency between the federal and state regulatory requirements, avoids duplication and unnecessarily lengthy state rules, and provides correlative guidance from the federal programs. The WVMA is particularly supportive

of each rule that incorporates the federal hazardous waste rules maintain the exact incorporation date as the OWM. Because the OWM is by statute the lead agency for hazardous waste management in West Virginia, W.Va. Code §22-18-4, the WVMA encourages the OWM to assert its leadership role in assuring other agencies of state government conform their rules to those of the OWM. Not only will this avoid overlap of different regulations and avert single factual situations from being regulated by rules adopted in different years, but also will assist in securing federal authorization of the state hazardous waste management program.

B. Consolidation of DEP Hazardous Waste Programs

The WVMA urges the DEP to consolidate the regulation of air emissions from hazardous waste regulation within the OWM. The regulation and permitting has traditionally been, distributed between the Office of Air Quality and the Office of Waste Management and covered by two separate rules, 33 CSR 20 and 45 CSR 25. The WVMA suggests that the DEP promulgate a single rule and solicit a single permit application for hazardous waste activities subject to regulations.

For years implementation of the air emission regulation from hazardous waste units and hazardous waste treatment, storage and disposal facilities was vested in the Air Pollution Control Commission. With the passage of the DEP Reorganization Bill in 1994, the Office of Air Quality assumed the statutory authority of the old APCC. Still, it WVMA's understanding that the OAQ maintains a staff of two to handle permit issues for emissions from hazardous waste facilities and units. It is further the WVMA understanding that the OAQ receives monies from the OWM to implement the air portion of the hazardous waste management program. Moreover, an entire separate rule continues to be maintained to address the air aspects of hazardous waste management. The WVMA submits that this duplication wastes resources and burdens the regulated community

which is obliged to comply with the duplicative regulations. Accordingly, an executive decision needs to be made to consolidate the air and waste subparts of hazardous waste management including promulgation of a single rule and a single permit.

At the very least, a single permit process needs to be coordinated between the OWM and the OAQ so that public participation requirements set forth in 33 CSR 20, §11 need only be accomplished once. As the OWM is aware, the public participation requirements include numerous notices to the public, meetings with interested persons and other requirements that will be time consuming. Resources of the OWM, OAQ and the permittee will be conserved. Thus, if a permit is submitted, the public participation permit requisite need to be coordinated so that the process only needs to be undertaken a single time.

C. State Authorization

The WVMA commends the DEP and the OWM in seeking full state authorization of the hazardous waste management program. The WVMA offers its support in securing state authorization from the EPA.

III. SPECIFIC COMMENTS

A. Section 3.5

The WVMA commends the OWM for maintaining consistency with significant federal changes by incorporating by reference the recent final rules issued May 26, 1998, providing clarification of the exclusion from hazardous waste for certain scrap metals and circuit boards destined for recycling.

B. Section 11.7

Section 11.7 adds a new section allowing the chief to establish an information repository for all materials related to a permit application. The WVMA points out that EPA recognized that the imposition of an information repository was to be reserved for special instances where the level of interest is so great it dictates the establishment of the repository. The WVMA want to make it clear that the information repository is not a regular requirement of the permit process.

C. Section 11.9.e

The WVMA is concerned with any changes to the confidentiality provisions. The ability to preclude access to company trade secrets and proprietary information is precious to WVMA members. In today's competitive world, protection of company information is essential to combating infringement of patents and processes. Thus, any changes to the confidentiality provisions are of great concern.

Upon review of the language, the only change is to allow the chief to retain a copy of information that was rejected by the chief as confidential. While the change seems innocuous on its face, the WVMA submits that the change has much further ramifications for public dissemination of the material the WVMA believes is protected.

Under the current rule, if the person submitting the information fails to establish to the satisfaction of the chief that the material is confidential, the OWM marks the submission as "rejected" and promptly return the information to the person who submitted it. As WVMA understands, the OWM seeks to retain a copy of the "rejected" material for the purpose of evaluating and measuring prior submission against recent submissions to establish consistency in the OWM application of the rule. While the goal of consistency and fairness is laudable, the WVMA is concerned that this material will then be available pursuant to a Freedom of Information Act request.

Accordingly, the WVMA asserts that either the rule be returned to its original statement, or

in the alternative, the OWM maintain the retained copy as confidential notwithstanding that it had been originally rejected.

D. Table 1, Permit Application Fee Schedule

The WVMA applauds the proposed reduction in fees for Class 1 permit modifications under 40 CFR 270.42; however, the WVMA submits that \$500 remains too high in relation to the resources expended in processing a Class I permit modification. The WVMA suggests a \$50 fee for Class I modifications.

Under 40 CFR 270.42, a Class I modification, for example, is administrative and informational changes; correction of typographical errors; equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls); changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee (to provide for more frequent monitoring, reporting, sampling, or maintenance); changes in name, address, or phone number of coordinators or other persons or agencies identified in the contingency plan. Thus, the review of the proposed change by the OWM is more ministerial than substantive. Accordingly, the fee ought to reflect the minimal effort involved in review of the permit modification.

IV. CONCLUSION

The WVMA is committed to ensuring reasonable regulatory standards, and in the spirit of continued cooperation, submits these comments for OWM's consideration.

If the OWM has any questions, or if additional information is desired, please contact the WVMA at your earliest possible convenience.

Respectfully submitted this 22nd day of July, 1998.

Karen S. Price, President
Ahmed Talebi, Waste Team Leader
West Virginia Manufacturers Association
2001 Quarrier Street
Charleston, West Virginia 25311
(304) 342-2123

Prepared by:
Robinson & McElwee
P.O. Box 1791
Charleston, West Virginia 25326
Contact: Michael P. McThomas, Esquire
(304) 347-8339

**EPA COMMENTS ON 33CSR20
OFFICE OF WASTE MANAGEMENT PROPOSED REGULATIONS**

Necessary for Authorization

EPA acknowledges the effort made by the Office of Waste Management on regulatory changes which had been requested and made to date on the proposed regulations, i.e. the revisions to Section 33-20-11, the additional portion in the citation for 33-20-11-19.e and the deletion of the citation at 33-20-2.1.a.1. Changes were requested to reflect the necessary text for Federal program equivalency and the potential for program authorization to the State.

The following areas are in need of further review and revision prior to the submission to the State Legislature.

1. Part 124 - Attached to this document are editorial comments on the State's new Section 33-20-11. The revisions made to this Section are acceptable for authorization. Coordination of these editorial changes should be completed with the Office of Air Quality who have been instructed to add this exact Section of provisions to their regulations at 45-CSR-25.

2. Import/Export Requirements - EPA Headquarters has informed this Regional Office that the State's previous approach to import/export requirements in their regulations do not meet the requirements for authorization and are not consistent with the national approach for imports/exports of hazardous waste. The Regional Office is now requesting that the State review how entries are made at the following cites and change the way the State is incorporating these provisions by reference. The Region suggests using the attached text (National Incorporation by Reference Guidance) which should assist in incorporating these provisions by reference.

Incorporation of 40 CFR 262 Subparts E & F at 33-20-5.3 & 5.4.
Citation at 33-20-8.3 - In relation to 40 CFR 265.12(a). The Office of Waste Management should use similar language at found at 33-20-7.4.
Citation at 33-20-13-6, Exports of Universal Waste.

3. Additional Editorials -

1. Regulatory Revision Checklist 153 revised the paragraphs at 40 CFR 261.5(f)(3)(iv) and (g)(3)(iv) and added paragraphs at 40 CFR 261.5(f)(3)(v) and (g)(3)(v). Prior to this change, the provisions at (f)(3)(iv) and (g)(3)(iv) allowed small quantity generators to ensure delivery of hazardous waste to a facility which is permitted to manage municipal or industrial solid waste. At § 33-20-3.2, the State has excepted 40 CFR 261.5(f)(3)(iv) and (g)(3)(iv) from the incorporation by reference because West Virginia does not allow small quantity generators to ensure delivery to such facilities. Revision Checklist 153 modified (f)(3)(iv) and (g)(3)(iv) to address only facilities permitted to manage municipal solid waste. It then added (f)(3)(v) and (g)(3)(v) to address facilities permitted to manage non-municipal, non-hazardous solid waste. The State may want to modify § 33-20-3.2 to exclude the new paragraphs from its incorporation by reference. This can be accomplished by revising the provision as indicated below:

3.2. *The provisions of 40 CFR § 261.5(f)(3)(iv) and (v) and 40 CFR § 261.5(g)(3)(iv) and (v) are excepted from incorporation by reference. Conditionally exempt small quantity generators shall notify the chief of their hazardous waste activity in accordance with Section 4 of this rule.*

2. Because the Office of Waste Management does not regulate air emissions, the regulations should except 40 CFR 270.27 from the incorporation by reference and refer the regulated community to the Office of Air Quality regulations. An example of how this could be accomplished is included here:

11.22. 40 CFR § 270.27. The provisions of 40 CFR § 270.27 are excepted from incorporation by reference. Consult the rules of the office of air quality regarding air emission controls for tanks, surface impoundments, and containers

Other State Agency Regulations/Legislative Activities

Office of Air Quality - Formal comments have been forwarded to the Office of Air Quality on the proposed 45 CSR 25 regulations. We have requested that the Office of Air Quality discuss these comments with the Office of Waste Management to ensure that both Agencies incorporate changes needed consistently with the Office of Waste Management.

Public Service Commission - Currently, EPA is preparing suggested text to revise the Public Service Commission's regulations for the hazardous waste program. EPA will send these proposals to the Office of Waste Management under separate cover and at a later date. These changes reflect changes necessary for State authorization of the hazardous waste program. EPA is hoping that these regulatory changes can be proposed to the Public Service Commission from the Office of Waste Management for immediate adoption by the Commission. It is our understanding that the Public Service Commission can promulgate regulations immediately as requested.

Division of Highways - EPA acknowledges the efforts made by the Office of Waste Management and the Division of Highways to review and update the Division of Highways regulations in regards to the transportation of hazardous waste over the State's roads and highways.

Suggested for Regulatory Adoption

EPA has recently promulgated two new combustion rules which may be of interest to the State for considering adoption during this Legislative Session. A similar comment on these rules was previously sent to the Office of Air Quality. These rules are as follows:

12/8/97- Hazardous Waste Treatment, Storage and Disposal Facilities and Hazardous Waste Generators: Organic Air Emission Standards for Tanks, Surface Impoundments and Containers.

6/19/98 - Hazardous Waste Combustors, Final Rule. Part 1

This rule covers RCRA comparable fuel exclusion, permit modifications for hazardous waste combustion units trying to comply with the MACT, Notification of Intent to Comply for MACT subject facilities, and waste minimization and pollution prevention criteria for compliance extensions. This rule is considered less stringent than the existing Federal regulations. Adoption of this rule will greatly enhance the implementation of the upcoming MACT standards and ease the permitting burden on the States.

If the State is interested in adopting these new rules, the OAQ and the OWM should discuss how changes should be made to encompass the incorporation within 45CSR25 and 33CSR20 to ensure consistency within the program. The State can incorporate the specific federal register notices into their regulations.

PART 124/33-20-11 COMMENTS

RCRA Regulatory Citation	Corresponding State Regulatory Citation	Comments
Specific Comments:		
1. 124.5(c)	11.9.b.1., p. 28	In the first sentence, the State should correct the internal reference "11.9" to read "11.10" which addresses "Draft Permits".
2. 124.10(a)(2)	11.12.b., p. 30	In the first sentence, the State should correct the internal reference "11.10" to read "11.9" which addresses "Modification, Revocation and Reissuance, or Termination of Permits"
3. 124.14(b)(1)	11.15.a.1, p. 33	The State should correct the internal reference to "11.9" to read "11.10" which addresses "Draft Permits".
4. 124.14(b)(3)	11.15.a.3, p. 34	The State should correct the internal reference to "11.15" to read "11.12" to properly correspond to the Federal code's reference to § 124.10.
5. 124.17(a)(1)	11.17.a.1., 34	In the first sentence, West Virginia should correct "on the draft permit" to read "of the draft permit".
6. 124.17(a)(2)	11.17.a.2., p. 34	The State should insert "the" between "on" and "draft". This typographic error was addressed in specific comment 14 of the initial review.
7. 270.2 "RCRA permit"	11.3.a., p. 22	In the third sentence, the State should change "11.4 through 11.14" to "11.4 through 11.18" to be consistent with the reorganization of 33-20-11.
8. 270.12	11.20., p. 37	In the last line of this provision, West Virginia should replace "11.17" with "11.19" which addresses "Public Access to Information".
9. 124.10(c)(1)(ix)(C)	11.12.d.1.D.(c), p. 31	In the parenthetical, West Virginia may want to replace both occurrences "Chief" with "chief". Throughout the rules the State does not capitalize the word "chief".
10. 124.14(b) & ©	11.15., pp. 33-34	Throughout this section, the State capitalizes the word "Section" which is inconsistent with the use of the word in other provisions. The State may want to replace "Section" with "section" for internal consistency.

West Virginia Part 124 Consequential Comments

RCRA Regulatory Citation	Corresponding State Regulatory Citation	EQ I/ MS LS BIS NIS CL UK INC	Comments
--------------------------------	--	--	----------

Specific Comments

- | | | | | |
|----|----------------------|--|----|---|
| 1. | 124.3(f)
124.3(g) | 11.8.d, p. 27
11.8.e, p. 27 | CL | <p>In the proposed rules addressed by the initial review, West Virginia included analogs to 124.3(c)-(g) at 11.7.b. through 11.7.f. These provisions are not required for authorization. In the final proposed rules, the State has removed its analog to 124.3(c) (previously 11.7.b.) while retaining the analogs to 124.3(d)-(g) at 11.8.b. through 11.8.e. The provision at 11.8.d. defines "effective date" by referencing "11.7.b". In addition, the provision at 11.8.e. relies on this definition of "effective date". For clarity, the State should either: (1) remove the provisions at 11.8.d. and 11.8.e. since the State no longer has an analog to 124.3(c), or (2) adopt an analog to 124.3(c) and at 11.8.d, replace "11.7.b." with the State's analog to 124.3(c).</p> |
| 2. | 124.8(a) | 11.11.a, p. 29 | CL | <p>The provision at 11.11.a. explains when the State must prepare a fact sheet for a draft permit. However, at 11.10.d. the State requires that all draft permits prepared by the chief be accompanied by a fact sheet. For clarity, West Virginia should remove the phrase "for a major hazardous waste management facility, or for each draft permit which the chief finds is the subject of wide-spread public interest or raises major issues". The first sentence should be changed to "A fact sheet shall be prepared for every draft permit."</p> |
| 3. | 124.10(c)(1)(ii) | 11.12.d.1.B., p. 30
(was 11.11.c.1.B. in
draft proposed regs.) | CL | <p>West Virginia has revised this provision based on the suggestions in specific comment 4 of the initial review. However, where the Federal provision refers to "404" permits the State incorrectly refers to "42 U.S.C. § 1344". The correct citation for § 404 of the Federal Water Pollution Control Act is 33 U.S.C. § 1344. For clarity, the State should either replace "42 U.S.C. § 1344" with "404", or correct the citation.</p> |

West Virginia Part 124 Consequential Comments

		EQ 1/ MS LS BIS NIS CL UK INC	
RRCRA Regulatory Citation			Comments
4.	124.10(c)(1)(x)(A) & (B)	CL	The State has adopted these provisions as subparagraphs of the provision found at 11.12.d.1.D. which is analogous to 124.10(c)(1)(ix). For clarity, West Virginia should not have these provisions as subparagraphs of 11.12.d.1.D. because the provisions are unrelated. The provision at 11.12.d.1.D. requires notice to be given to persons on a mailing list, while the provisions at 11.12.d.1.D.i. and 11.12.d.1.D.ii. require notice to be given to specified units of government. The State can correct this problem by redesignating 11.12.d.1.D.i. and 11.12.d.1.D.ii. as 11.12.d.1.E.i. and 11.12.d.1.E.ii.
5.	124.10(d)(1)(iv)	CL	West Virginia has revised this provision based on the suggestions in specific comment 6 of the initial review. However, the State has removed the language referring to the permit application. For clarity, the State should revise "of the draft permit and fact sheet" to "of the draft permit, fact sheet, and the application".
6.	124.12(a)(3)	CL	The provision at 11.14.c.1. should not be a subparagraph of 11.14.c. The provision at 11.14.c.1. requires that public notice of a hearing be given as specified in 11.12. This requirement should apply to public hearings conducted pursuant to 11.14.a. and 11.14.b, too. For clarity, the State should redesignate 11.14.c.1. as 11.14.d. and redesignate 11.14.d. through 11.14.f. as 11.14.e. through 11.14.g.
7.	124.14(b) and (c)	CL	West Virginia has included this section regarding the reopening or extension of the public comment period. This section, which was not included in the draft proposed rules, is analogous to 40 CFR 124.14(b) and (c) which are not required for authorization. However, the State has not adopted an analog to 124.14(c) which requires that a public notice be issued for the actions described in 124.14(b)&(c). For additional clarity and consistency with the Federal code, West Virginia should add an analog to 124.14(e) to explicitly require public notice be issued under 11.12.
8.	124.32.(b)(1)	CL	For clarity, the State may want to replace the period at the end of this provision with ", and" because this provision is the second item in a list of three items found at 11.6.b.1. through 11.6.b.3.

West Virginia Part 124 Consequential Comments

	EQ I/		EQ I/	
RCRA		Corresponding	BIS	
Regulatory		State	NIS	
Citation		Regulatory	CL	
		Citation	UK	
			INC	
				Comments

I/	EQ	=	Equivalent		MS	=	More Stringent
	EQ	=	Equivalent		MS	=	More Stringent
	LS	=	Less Stringent		BIS	=	Broader in Scope
	NIS	=	Narrower in Scope		CL	=	Clarity Issue
	UK	=	Unknown how equivalency is affected		INC	=	Inconsistent

**NATIONAL
INCORPORATION BY REFERENCE
GUIDANCE
TEXT**

264.573(b)(3)] to install a leak collection system applies only to those non-HSWA drip pads that are constructed after June 16, 1993 except for those constructed after June 16, 1993 which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to June 16, 1993."

2. A State has adopted the provisions addressed by Revisions Checklist 82 and 120 at different times with the promulgation dates being June 16, 1992 and September 16, 1993, respectively. In these examples, the wording which differs from the Federal wording is underlined so that a State can either use the wording as written or make modifications to the adoption by reference of these provisions.

"The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before June 16, 1992 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to June 16, 1992. All other drip pads are new drip pads. The requirement at [insert analog to 264.573(b)(3)] to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992 except for those constructed after December 24, 1992 which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at [insert analog to 264.573(b)(3)] to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 16, 1993 except for those constructed after September 16, 1993 which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to September 16, 1993."

VIII. Non-Delegable Portions of RCRA

A. Imports/Exports

Because of the federal government's special role in matters of foreign policy, EPA does not delegate import/export functions. This promotes national coordination, uniformity and expeditious transmission of information between the United States and foreign countries. For a discussion of these issues, see 51 FR 28678, August 8, 1986. Currently, there are three major areas of the RCRA regulations that address imports and exports--Part 262 Subparts E, F and H.

Part 262, Subpart E--Most of the governmental functions covered under Part 262, Subparts E are not delegable to States and the term "EPA Acknowledgement of Consent" should remain "EPA Acknowledgement of Consent." Also the terms "Administrator" and "Regional Administrator" should not be substituted with the State's analogous terms. A State which adopts Subpart E of Part 262 by reference should not apply the blanket substitution of terms to this Subpart. This can be accomplished by the State including the following language in the section of its code where it adopts Federal Part 262, Subpart E by reference:

"The substitution of terms in (citation at which State's substitution of terms occur) does not apply in 40 CFR 262.51, 262.52, 262.53, 262.54, 262.55, 262.56 and 262.57, as adopted in this rule."

See the instructions to Appendix A of the SAM for information on specific provisions within Part 262, Subpart E where the blank substitution of terms should not be used.

Part 262, Subpart F--while processing imports, this subpart does not have any language which needs to be addressed specially when adopting by reference.

Part 262, Subpart H--This subpart identifies wastes, under RCRA, that are subject to a graduated system of procedural and substantive controls when they move across national borders within the Organization for Economic Cooperation and Development (OECD) for recovery. It, like governmental functions covered under Part 262, Subpart E, is not delegable to States; in fact, States are not required to adopt these provisions without authorization. However, EPA encourages States to incorporate these requirements into their regulations for the convenience of the regulated community and for completeness, particularly where a State has already incorporated Part 262, Subparts E and F. The following are special procedures which should be followed if a State chooses to adopt these provisions by reference:

- All references to United States, U.S., U.S. national procedures, United Nations, U.N., U.N. classification number, Organization for Economic Cooperation and Development, OECD, Federal Register, EPA Acknowledgement of Consent, Environmental Protection Agency, EPA, and any other Federal Agencies or Offices within Federal Agencies should not be substituted with State terms.
- At 262.85(g), the Federal references to 40 CFR 2.203(b) and 260.2 should be retained.
- The following language, or a variation of this language, is used at 261.6(a)(5), 262.10(d), 262.58(a), and 262.80(a):

"Any person who exports or imports hazardous waste subject to Federal manifest requirements of Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to State requirements analogous to 40 CFR Part 273..."

A State can incorporate this language directly in its regulations. However, the following modified language may be clearer to the regulated community, since the requirements in an authorized State are subject to the State's, rather than Federal, manifest requirements.

"Any person who exports or imports hazardous waste, except "State-only waste", subject to the manifesting requirements of [insert State analog to 40 CFR Part 262], or subject to the universal waste management standards of [insert State analog to 40 CFR Part 273]..."

- States may request copies of the documents and notifications sent to EPA, as long as the request does not limit or in any way interfere with the documents and information which must be submitted to EPA.

B. Land Disposal Restrictions

The following Part 268 sections are not delegable to States because of the national concerns which must be examined when decisions are made relative to them: 268.5 (case-by-case effective date extensions) and 268.42(b) (application for alternate treatment method). "No migration" petitions under 268.6 will also be handled by EPA.

EPA considered section 268.44 as non-delegable (see 52 FR 25783, July 8, 1987) until just recently. In the preamble to the HWIR-media proposed rule, EPA announced that States may seek authorization for the site-specific treatment variances at 268.44. Because there has been some confusion over how to handle the delegability issue in State regulations, some States may already have been inadvertently authorized for 268.44. EPA is requesting that States note in their HWIR-media program revision application, other authorization applications, or in official correspondence whether they believe they have been authorized for site-specific treatment variances. EPA will evaluate that aspect of a State's submittal to confirm the State's authorization. For further information see 61 FR 18828 (April 29, 1996).

Relative to adopting by reference the non-delegable sections of Part 268, it should be made clear that the authority for carrying out these provisions stays with EPA. To assure this, all occurrences of Regional Administrator, Administrator, EPA, and Director should not be replaced with a State's analogous terms. Thus, exceptions must be made to the blanket substitution of these terms which is typically used when a State incorporates by reference. Approaches for doing this are outlined in Section V above which addresses substitution of Federal terms and references.

IX. Financial Responsibility Requirements

A. 264.143(h), 264.145(h), 265.143(g) and 265.145(g)

These Federal paragraphs address financial mechanisms for multiple facilities. States should include language to clarify that whenever the regulations require that owners and operators notify several Regional Administrators of their financial responsibilities, the owners and operators must notify the State Agency and other State Agencies regulating hazardous waste if the facilities are located in authorized States, or the appropriate Regional Administrators if facilities are located in unauthorized States. The Federal language requires that the notification be made to the Regional administrator; thus the following Federal language in these sections should be replaced:

"If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of each such Region."

with language similar to the following:

"If the facilities covered by the mechanism are in more than one State, identical evidence of financial assurance must be submitted to and maintained with the State Agency regulating hazardous waste or with the appropriate Regional Administrator if the facility is located in an unauthorized State."

B. Financial Instruments (264.151)

In several places, the financial instruments at 264.151 require that owners and operators notify all Regional Administrators affected by their financial assurance mechanisms. Under a State's requirements, these Regional Administrators still need to be notified as well as the State. Again, the blanket substitution or redefinition of Federal terms will incorrectly change these requirements. Thus, States adopting by reference need to specifically address these requirements. The following approach is taken from the New Jersey regulations:

"Whenever 40 CFR 264.151 requires that owners and operators notify several Regional Administrators of their financial obligations, the owner or operator shall notify both the Department and all Regional Administrators of Regions which are affected by the owner or operator's financial assurance mechanisms."

X. RCRA Expanded Public Participation Requirements

States need to except from the adoption by reference the limiting language at 40 CFR §§124.31(a), 124.32(a) and 124.33(a). This can be accomplished in one of the following manners:

- (1) except the entire paragraph from the adoption by reference and replace it with the version shown below, or
- (2) adopt by reference the entire paragraph subject to the modifications shown below. (Note an example of how to word this is shown at the end of this section after the modifications needed to 124.33(a).)

A. § 124.31 Pre-application public meeting : notice.

(a) *Applicability.* The requirements of this section shall apply to all [insert the name of the appropriate State hazardous waste permit] applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to [insert the name of the appropriate State hazardous waste 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 [insert State analog to class 3 permit modification] under [insert State analog to 40 CFR 270.42]. The requirements of this section do not apply to permit modifications under [insert State analog to 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.

B. § 124.32 Public notice requirements at the application stage.

(a) *Applicability.* The requirements of this section shall apply to all [insert the name of the appropriate State hazardous waste permit] applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to [insert the name of the appropriate State hazardous waste permit] applications seeking renewal of permits for such units under [insert State analog to 40 CFR 270.51]. The requirements of this section do not apply to permit modifications under [insert State analog to 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.

C. § 124.33 Information repository

(a) *Applicability.* The requirements of this section apply to all applications seeking [insert the name of the appropriate State hazardous waste permit] permits for hazardous waste management units.

D. Example of incorporation by reference of § 124.31(a) with modifications

"The provisions at 40 CFR 124.31(a) are incorporated by reference as of July 1, 1996 with the following modifications:

(a) *Replace both occurrences of "RCRA Part B" with "State Part B";*

(b) *Replace "class 3 permit modification" with "State class 3 permit modification";*

(c) *Replace all references to "40 CFR 270.42" with [insert state analog to 270.42, e.g., "30-170.42"]; and*

(d) *Delete the following sentence "For the purpose of the section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271."*

XI. Special Guidance for the Adoption of Selected Revision Checklists

A. Revision Checklist 151

Note that the CFR generally includes all rules published through July 1; however, the CFR revised as of July 1, 1996, includes the July 10, 1996 rule. Also, note that two corrections promulgated after July 1, 1996 (August 26, 1996 and the February 19, 1997 rules) are included in this checklist. States incorporating the 1996 CFR by reference should be aware of this and be sure to add the August 26, 1996 and February 19, 1997 rules to their incorporation by reference in order to completely adopt this revision checklist.

B. Revision Checklist 154

EPA encourages States to adopt the Subpart CC requirements as reflected on this consolidated revision checklist. States incorporating the Federal regulations by reference should be aware that five of the seven rules for the Subpart CC standards were promulgated after June 30, 1995.

States choosing to incorporate the Federal regulations through June 30, 1995, should add the September 29, 1995 rule; the November 13, 1995 rule; the February 9, 1996 rule; the June 5, 1996 rule; and the November 25, 1996 rule to their incorporation by reference in order to completely adopt Revision Checklist 154.

If the State incorporates the Federal regulations through June 30, 1996, only the last of the rules for Subpart CC standards (the November 25, 1996 final rule) should be added to the incorporation by reference in order to completely adopt Revision Checklist 154.

XII. Adoption of Specific CFR Parts

The following Table lists all the places in the CFR where EPA has found that something should be changed for an incorporation by reference and provides an explanation of the necessary changes. Although it is an extensive list, it is not comprehensive. There are likely to be situations that EPA has not yet encountered. overview of the changes that should be made when a State adopts the Federal regulations by reference. This table, while extensive, is not a comprehensive list of every provision that needs attention in an incorporation by reference. It is a list of all the places that have come up in actual incorporations by reference; details to assist States wanting to adopt the Federal regulations by reference are provided in the body of this document. States should carefully review the Federal regulations to ensure that the correct substitutions and modifications are include in their regulations. This is especially true regarding references to RCRA citations, "EPA identification number" and "EPA forms".

Federal Citation	Guidance
40 CFR Part 260	
260.2	40 CFR 260.2 is not required for authorization; therefore, States do not have to include 40 CFR 260.2 in their adoption of the Federal regulations by reference. The requirements for Availability of Information are found on the "Availability of Information" checklist for RCRA section 3006(f), but 40 CFR 260.2 is not included on that checklist.
260.10 "Act or RCRA"	<p>States need to retain references to certain sections (e.g., RCRA §3008); therefore, States may want to retain the Federal definition of "Act or RCRA" and add a definition for its own statutes.</p> <p>Alternately, States may want to replace the Federal definitions with their analog to RCRA. In such cases, the State should make it clear that at those Federal paragraphs where the RCRA references must remain, the term RCRA has the definition as found in 40 CFR 260.10.</p> <p>See Section V.G for additional discussion regarding Federal references to RCRA.</p>
260.10 "Administrator", "EPA", "Regional Administrator"	<p>Certain sections of the Federal regulations are not delegable to the States and States should therefore retain references to the terms "Administrator", "EPA", and "Regional Administrator". Therefore, States may want to retain these Federal definitions.</p> <p>If a State chooses to replace the Federal terms with the State's analogous term, it should make it clear in its adoption of the non-delegable portions of the Federal regulations that the terms "Administrator", "EPA", and "Regional Administrator" have the meaning found at 40 CFR 260.10.</p>
260.10 "EPA hazardous waste number", "EPA identification number", "EPA Region"	States should not substitute "EPA" with the State term.

Federal Citation	Guidance
260.10 "Existing tank system or existing component" and "New tank system or new tank component"	<p>In the definitions of "Existing tank system or existing component" and "New tank system or new tank component", the references to "July 14, 1986" relative to the commencement of tank installation apply only to HSWA tank systems (i.e., new underground tank systems and those existing underground tanks that cannot be entered for inspection).</p> <p>As discussed in <i>Section VII.1--Containment and detection of release</i>, requirements relative to non-HSWA tanks do not take effect until States adopt the Federal regulations. Thus, a State should make it clear in its adoption of these definitions that for non-HSWA tanks (i.e., inground tank systems, onground tank systems, aboveground tank systems and existing underground tank systems that can be entered for inspection), the date relative to the commencement of installation is the promulgation date of the State's tank regulations.</p>
260.10 "Federal agency", "Person"	States should not replace the term "Federal Agency" with a State definition; otherwise, the State's definition for "Person" will not be equivalent to the Federal definition. The term "Federal Agency" is used in the definition for "Person".
260.10 "Hazardous waste constituent"	This definition makes reference to the "Administrator". If a State retains reference to 40 CFR part 261, subpart D, it should also retain the reference to "Administrator" (as defined in 40 CFR 260.10).
260.10 "Person", "State", "United States"	States should not replace the reference to "State" with its analogous term.
260.11(a)	The references to "EPA Publication" and "U.S. Environmental Protection Agency" should remain. States should not substitute EPA with the State term.
260.20 & 260.22	<p>Delisting--The State must decide whether or not it will have its own delisting program. If it has its own program, it should substitute the Federal terms within 260.20 & 260.22. The State should understand that this program completely replaces the Federal delisting program, with the State program operating in lieu of the Federal Program. If the State chooses not to adopt a delisting program, it has several options which are outlined in the text that precedes this table. The State should also indicate whether it will accept a delisting decision made by EPA.</p> <p>Note that at 260.22(d)(2), the reference to "EPA Publication" should remain. States should not substitute "EPA" with the State term.</p>
260.30, 260.31, 260.32	Variance from Classification as a Solid Waste--A State should decide if it will adopt these provisions. If it does, then the Federal terms should be replaced in these sections. If the State does not adopt these provisions, then 260.31-260.32 should be excluded from the adoption and any reference to these variances within the adopted Federal code should be removed, because, unlike delisting, the EPA does not continue to grant these variances if a State chooses to not adopt these provisions.
260.33(a)	Delete "in the region where the recycler is located"
Part 260, Appendix I	Not required for authorization.

Federal Citation	Guidance
261.3(a)(2)(v) 261.22(a)(1)&(2) 261.24(a)	The term "EPA Publication" should remain; States should not substitute "EPA" with the State term.
261.4(b)(11)(ii)	A copy of the written State agreement regarding the provision to assess the groundwater and the need for further remediation should be sent to the Characteristics Section (OS-333), U. S. Environmental Protection Agency and not to the State. A copy of the written agreement may also be sent to the State, if the State chooses to include this requirement. A State which requires a copy of the agreement would be more stringent.
261.4(e)(3)(iii)	Delete "in the Region where the sample is collected".
261.4(f)(1)	This citation refers to "the Regional Administrator, or State Director (if located in an authorized State)"; thus a State that adopts the paragraph by reference with no modification should retain the term "Regional Administrator" at this citation.
261.6(a)(3)(i)(A)&(B)	This citation addresses shipment for reclamation in a foreign country; thus, the term "EPA Acknowledgment of Consent" should remain "EPA Acknowledgment of Consent". States should not substitute "EPA" with the State term. (See discussion on Part 262, Subpart E, below and in Section VIII.A).
261.6(a)(5)	The following language is used at this Federal paragraph: <i>"... subject to either the Federal manifest requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273..."</i> A State may incorporate this language directly in its regulations or modify its adoption by reference. This is described in Section VIII.A of this document.
261.10 261.11	These sections address the criteria used by the EPA Administrator for identifying the characteristics and listing of hazardous waste. Therefore, the term "Administrator" should remain the "Administrator of the United States Environmental Protection Agency or his designee" (i.e., as defined in 40 CFR 260.10).
Part 261, Appendix IX	40 CFR 261, Appendix IX is not required for authorization; therefore, States do not have to include this Appendix in their adoption of the Federal regulations by reference. If a State chooses to include this Appendix, it should make it clear that the term "EPA" means the U.S. Environmental Protection Agency. Another alternative is to include an analogous Appendix IX that is specific to the State.
40 CFR Part 262	

Federal Citation	Guidance
262.10(d) 262.58(a) 262.80(a)	<p>The following language, or a variation of this language, is used at these Federal paragraphs:</p> <p style="text-align: center;"><i>"Any person who exports or imports hazardous waste subject to Federal manifest requirements of Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to State requirements analogous to 40 CFR Part 273..."</i></p> <p>A State can incorporate this language directly in its regulations or modify its adoption by reference. This is described in Section VIII.A of this document.</p>
262.10(g)	<p>EPA retains enforcement authority under RCRA section 3008. Therefore, the reference to "section 3008 of the Act" (i.e., RCRA) should remain. In addition, the State should add its analog to RCRA §3008 to the Federal reference.</p> <p>See Section V.G for additional information.</p>
262.12	<p>This section addresses the assignment and use of EPA identification numbers. References to "EPA Identification Number", "EPA form" should remain such and the State should not substitute "EPA with the State term. Thus, 262.12 should be excluded from any blanket substitution of Federal terms with State terms.</p> <p>If the State requires that the EPA identification number be obtained directly from EPA, then the term "Administrator" should not be replaced with the State's analogous term.</p>
262.32(b)	<p>This paragraph addresses container markings. States may want to modify the information requirement to include references to State law and the State Agency which should be contacted.</p>
262.41	<p>The references to "EPA form", "EPA identification number" and "EPA hazardous waste number" should remain. States should not substitute "EPA" with the State term.</p>
262.42(a)(2)	<p>Delete "for the Region in which the generator is located".</p>
Part 262, Subparts E and H (Exports)	<p>Most of the governmental functions covered under Part 262, Subparts E and H are not delegable to States. Therefore, the following terms should not be substituted with State terms:</p> <p>All references to Administrator, Regional Administrator, United States, U.S., U.S. national procedures, United Nations, U.N., U.N. classification number, Organization for Economic Cooperation and Development, OECD, Federal Register, EPA Acknowledgment of Consent, Environmental Protection Agency, EPA, and any other Federal Agencies or Offices within Federal Agencies.</p> <p>Finally, the term "EPA" should not be replaced with the State's term in "EPA identification number", "EPA ID number" and "EPA hazardous waste number".</p> <p>See Section VIII.A of this document and the instructions to Appendix J of the SAM for further information.</p>
262.85(g)	<p>The Federal references to 40 CFR 2.203(b) and 20 CFR 260.2 should be retained.</p>

Federal Citation	Guidance
Part 262. Appendix, Item 19	<p>This section contains instructions for owners and operators in authorized and unauthorized States and a list of all EPA Regional offices. A State applying for authorization may want to modify the third paragraph of Item 19 to read as follows:</p> <p><i>Owners and operators of facilities located in [INSERT STATE'S NAME] should contact [STATE AGENCY] for information on State Discrepancy Report requirements. If located in another authorized State, the appropriate State Agency should be contacted.</i></p>
40 CFR Part 263	
263.11	<p>This section addresses the receipt and use of EPA identification numbers. References to "EPA Identification Number" and "EPA form" should remain as such and the State should not substitute "EPA with the State term. Thus, 263.11 should be excluded from any blanket substitution of Federal terms with State terms.</p> <p>If the State requires that the EPA identification number be obtained directly from EPA, then the term "Administrator" should not be replaced with the State's analogous term.</p>
263.20(a), (c), (e)(2) & (f)(2)	<p>These paragraphs in the Federal code address manifest requirements for exports, thus the references to "EPA Acknowledgment of Consent" should remain as such. Also the references to "EPA identification number" at 263.20(e)(2)&(f)(2) should remain. States should not substitute "EPA" with the State term.</p>
263.20(g)(4)	<p>This citation addresses the requirement that transporters must give a copy of the manifest to a U. S. customs official at the point of departure from the U.S. Thus, a State official or agency cannot be substituted for the "U.S. Customs Official". States may, however, request that a copy of the manifest also be sent to them. Note that if a State also requires a copy of the notification, it would be more stringent.</p>
40 CFR Parts 264 and 265	
264.1(f) 265.1(c)(4)	<p>States seeking authorization should not adopt the Federal paragraph. This paragraph clarifies that the Federal regulations do not apply to an owner or operator located in an authorized State.</p>
264.1(g)(1) 265.1(c)(5)	<p>Replace "the State" with the State's analogous term.</p>
264.11 265.11	<p>These sections address requirements for an EPA identification number. States should not substitute "EPA" with the State term in "EPA identification number" and "EPA form".</p> <p>If the State requires that the EPA identification number be obtained directly from EPA, then the phrase "apply to EPA" should not be replaced with the State's analogous term.</p>

Federal Citation	Guidance
264.12(a) 265.12(a)	<p>States cannot receive notifications of intent to import hazardous waste from foreign sources. Thus, States should not substitute the title of the head of their environmental agency for "Regional Administrator" in 264.12(a)(1) and 265.12(a)(1). The 264.12(a) and 265.12(a) notification should be sent to the "Regional Administrator." A State should, therefore, except 264.12(a)(1) and 265.12(a)(1) from its blanket substitution of the State term for "Regional Administrator".</p> <p>Also, at 264.12(a)(2) and 265.12(a)(2), the EPA address should not be replaced with the State's address.</p>
264.73(b)(10) 265.73(b)(8)	<p>These citations reference 268.5 and 268.6. A State cannot opt to reject petitions granted by EPA for land disposal restrictions under 268.5 and 268.6; therefore, the State should not delete the references to 268.5 and 268.6 at 264.73(b)(10) and 265.73(b)(8) from its code. See discussion for Part 268, below, for additional information.</p>
264.143(h) 264.145(h) 265.143(g) 265.145(g) 265.151	<p>These Federal paragraphs address financial mechanisms for multiple facilities in different States. States should include language to clarify that owners and operators must notify the State's Agency and other State Agencies regulating hazardous waste if the facilities are located in authorized States, or the appropriate Regional Administrators if facilities are located in unauthorized States. An example of how this can be accomplished is found in Section IX, above.</p>
264.147(a)(1)(ii) 264.147(b)(1)(ii) 264.147(g)(2) & (g)(4) 265.147(a)(1)(ii) 265.147(g)(2) & (i)(4)	<p>States should not replace the reference to "State" with its analogous term.</p>
264.149, 264.150 265.149, 265.150	<p>These portions of Federal code apply only to unauthorized States and are not appropriate in the code of States applying for authorization.</p>
264.191(a) 265.191(a)	<p>The Federal requirements at this citation, as introduced by Revision Checklist 28, were promulgated under both HSWA and non-HSWA authorities, with the distinction between the two authorities dependent on tank type.</p> <p>States should retain the Federal compliance date (January 12, 1988) for HSWA tanks.</p> <p>The compliance date for all other tanks (non-HSWA tanks) do not take effect until States adopt the Federal regulations. Thus, a State should make it clear in its adoption of the Federal requirements that for non-HSWA tanks, the compliance date is one year after the effective date of the State's tank regulations.</p> <p><i>See Section VII.1--Containment and detection of release</i> for further discussion on HSWA and non-HSWA tanks.</p>

Federal Citation	Guidance
264.191(c) 265.191(c)	<p>The Federal requirement at this citation, as introduced by Revision Checklist 28, was promulgated under both HSWA and non-HSWA authorities, with the distinction between the two authorities dependent on tank type.</p> <p>States should retain the Federal reference to July 14, 1986 for HSWA tanks.</p> <p>For non-HSWA tanks, the State should make it clear in its adoption of the Federal requirements that the applicable date is the promulgation date of the State's tank regulations.</p> <p>See <i>Section VII.1--Containment and detection of release</i> for further discussion on HSWA and non-HSWA tanks.</p>
264.301(l) 265.301(l)	<p>The Federal requirements at these citations were promulgated under both HSWA and non-HSWA authorities, with the distinction between the two authorities dependent on tank type.</p> <p>Thus, States should retain the Federal effective dates with respect to the HSWA tanks (i.e. all new underground tanks and existing underground tanks that cannot be entered for inspection).</p> <p>The requirements for all other tanks were promulgated under non-HSWA tanks and do not take effect until the States adopt and become authorized for the Federal regulations.</p> <p>See <i>Section VII.1--Containment and detection of release</i> for further discussion.</p>
264.301(l)	<p>This section is applicable only to a landfill located within the State of Alabama. This section of code is inappropriate for other States to adopt by reference.</p>
264.570(a) 265.440(a)	<p>The wood preserving rule was promulgated under both HSWA and non-HSWA authorities. States should be sure that a date is included for both HSWA and non-HSWA drip pads. The non-HSWA dates that should be used are dependent on when a State adopts Revision Checklists 82 and Revision Checklist 120. See the discussion at Section VII.B.5 above.</p>
Part 264, Appendix VI	<p>This section specifies political jurisdictions for various States which must be in compliance with 264.18(a). A State not listed in Appendix VI should not adopt this section by reference.</p>
40 CFR Part 266	
266.103	<p>As discussed in Section VII.B.2 above, §266.103 contains many dates associated with interim status standards for boilers and industrial furnaces (BIFs). The BIF regulations were promulgated under both HSWA and non-HSWA authorities with the distinction based on the type of unit. However, the non-HSWA units -- sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators -- are all in the interim status and not affected by the §266.103 requirements. Thus, there is no need to make this distinction between HSWA and non-HSWA units. If a State has made this distinction on, it should remove it at a later rulemaking. However, in the interim this distinction has no effect on the stringency of the State's regulations.</p>
40 CFR Part 268	

Federal Citation	Guidance
268.1(e)(3)	Exclude the 268.1(e)(3) reference to "EPA" from the blanket substitution of terms. States should not replace "EPA" with the State's analogous term because this Federal paragraph addresses wastes for which EPA has not promulgated land disposal prohibitions or treatment standards.
268.5 268.6 268.42(b) (See the instructions to Appendix J of the SAM for further information.)	Federal citations 268.5 and 268.42(b) address regulations which are under the sole responsibility of the EPA Administrator. These sections of Federal code are not delegable to States because of the national concerns which must be examined when decisions are made relative to them. Section 268.6 is currently non-delegable. 268.5 covers the procedures for granting case-by-case extensions to an effective date of a land disposal restriction. Under 268.6 (no-migration petition), EPA may grant petitions to allow disposal of certain hazardous wastes provided certain criteria are met. Under 268.42(b), EPA may grant waste-specific variances from a treatment standard. In adopting the 40 CFR Part 268 provisions, a State should either: 1) exclude these sections of code from the Part 268 adoption or 2) exclude these sections of code from the State's replacement of the terms "Administrator" and "Federal Register" with the State's analogous terms.
268.5 268.6 268.42(b) (cont'd)	An example of the first alternative would be for the State's adoption of 40 CFR Part 268 to read as follows: <i>"40 CFR Part 268 and its appendices, as of July 1, 1989, are adopted by reference except for 40 CFR 268.5, 268.6 and 268.42(b). The authority for implementing these excluded CFR sections remains with the U. S. Environmental Protection Agency."</i> An example for the second alternative is as follows: <i>"40 CFR Part 268 and its appendices, as of July 1, 1989, are adopted by reference. Any references to "Administrator" or "Regional Administrator" are replaced with "Director" except for 40 CFR 268.5, 268.6 and 268.42(b). The Administrator of the U.S. Environmental Protection Agency is responsible for carrying out these excluded sections of 40 CFR Part 268. Reference to Federal Register in 40 CFR 268.5, 268.6, and 268.42(b) implies the Federal Register published by the U. S. government."</i>

Federal Citation	Guidance
Internal references to 268.5, 268.6, and 268.42(b)	<p>States should not delete the following citations or references to these citations from its code. Such references appear in the following citations in Part 268:</p> <p>268.1(c)(1) applicable to extensions granted under 268.5 268.1(c)(2) applicable to petitions granted under 268.6 268.7(a)(3) reference to 268.5 and 268.6 268.30(d)(2) applicable to petitions granted under 268.6 268.30(d)(3) applicable to extensions granted under 268.5 268.31(d)(2) applicable to petitions granted under 268.6 268.31(d)(3) applicable to extensions granted under 268.5 268.32(g)(1) applicable to petitions granted under 268.6 268.32(g)(2) applicable to extensions granted under 268.5 268.33(e)(2) applicable to petitions granted under 268.6 268.33(e)(3) applicable to extensions granted under 268.5 268.35(f)(2) applicable to extensions granted under 268.6 268.35(i)(2) applicable to petitions granted under 268.6 268.35(i)(4) applicable to extensions granted under 268.5 268.36(h)(2) applicable to petitions granted under 268.6 268.36(h)(4) applicable to extensions granted under 268.5 268.50(d) reference to 268.5 and 268.6 268.40(b) reference to 268.42(b)</p>
268.9(d)	This paragraph makes references to "EPA region or authorized State". States should replace this phrase with the State's analogous term.
268.13	States do not need to adopt requirements equivalent to this paragraph because this section of Federal code contains the schedule by which EPA must evaluate wastes for land disposal restrictions. If a State adopts the Federal section, it should retain the references to "section 3001" and "Administrator" and not replace them with State analogs.
268.40(b)	There is a reference to treatment technology approved by the Administrator under the procedures set forth in § 268.42(b). 40 CFR 268.42(b) is non-delegable to States. Therefore, the reference to "Administrator" should remain. States should not substitute "Administrator" with the State term.
268.40(b)&(f)	The reference to "EPA Publication" should remain. States should not substitute "EPA" with the State term.

Federal Citation	Guidance
40 CFR Part 270	
270.1(a)&(b) 270.3 270.51	These Federal paragraphs are not required for authorization. Therefore States may choose to exclude them from their incorporation by reference.
270.2	<p>Certain sections of 40 CFR Part 270 (e.g. 270.5) address the interrelationships between the State and EPA. Therefore, States should retain the following definitions in their regulations as found in Federal code. These definitions should be excluded from the State's blanket substitution of "EPA" (and synonymous terms) with State terms:</p> <p>"Administrator", "Approved program or approved State", "Director", "Environmental Protection Agency", "EPA", "Final authorization", "Major facility", "Permit", "Regional Administrator", and "State/EPA agreement".</p>
270.2 "Person", "State"	States should not replace the reference to "State" with its analogous term.
270.5 introductory paragraph through 270.5(c)	This section addresses quarterly reports submitted by the State Director to the Regional Administrator; thus, the references to "EPA", "Regional Administrator" and "Administrator" should remain. Section 270.5 should be excluded from the blanket substitution of terms.
270.10(e)(2)	This paragraph addresses publication in the <i>Federal Register</i> by the EPA Administrator. The references to "Administrator", " <i>Federal Register</i> " and "EPA" should not be replaced with the State's analogous terms; therefore, exclude 270.10(e)(2) from the blanket substitution of terms.
270.10(e)(3)	This citation addresses compliance order issued under section 3008 of RCRA by the Administrator, thus, the term "Administrator" should not be replaced. See <i>Section V.G-References to RCRA</i> for further discussion.
270.10(f)(2) 270.10(g)(1)(i)&(ii)	States should modify these paragraphs so that it is clear that the application for permits should be submitted to the State Director. States which adopt the paragraphs with no modifications should retain the terms "EPA" and "Administrator".
270.10(f)(3)	States should exclude the reference to "Administrator" from the blanket substitution of terms because this paragraph addresses the incineration of polychlorinated biphenyls pursuant to an approval issued by the Administrator under section (6)(e) of the Toxic Substances Control Act.
270.11(a)(3)	States should retain the term "Regional Administrator". In this paragraph, the term is used as an example to clarify the meaning of "a senior executive officer" in a Federal Agency.
270.14(b)(18)	States need not adopt 270.14(b)(18) because it addresses a State financial mechanism in compliance with 264.149 or 264.150.
270.14(b)(20)	The paragraph addresses information requirements that may be necessary to enable the Regional Administrator to carry out his duties under Federal laws as required in 270.3. States are not required to adopt 270.3—Consideration under Federal law. States should review this paragraph and decide how they want to adopt it into their code.

Federal Citation	Guidance																		
270.14(b)(21)	This citation references 268.5 and 268.6. A State cannot opt to reject petitions granted by EPA for land disposal restrictions under 268.5 and 268.6, therefore, the State should not delete the references to 268.5 and 268.6 at 270.14(b)(21) from its code. See discussion for Part 268, above, for additional discussion.																		
270.32(a)	This paragraph refers to EPA issued permits. States can adopt the Federal paragraph and retain the reference to "EPA". Otherwise, the phrase "and for EPA issued permits only, 270.33(b) (alternate schedules of compliance) and 270.3 (considerations under Federal law)" should be deleted.																		
270.32(b)(2)	This paragraph makes reference to "Administrator or State Director"; thus a State that adopts the paragraph by reference with no modification should retain the term "Administrator" at this citation.																		
270.32(c)	This Federal paragraph refers to a State issued permit and a permit issued by EPA. Therefore, a State which adopts this Federal paragraph without modification should retain the reference to "EPA".																		
270.72(a)(5)&(b)(5)	These citations address corrective action orders issued under RCRA section 3008(h) by EPA, thus, the term "EPA" should not be replaced. See <i>Section V G—References to RCRA</i> for further discussion.																		
270.73	270.73 addresses the termination dates for interim status, or loss of interim status (LOIS), for various hazardous waste management units. The LOIS dates were promulgated under HSWA authority, thus, States should adopt the LOIS dates given at 270.73 into their regulations. See <i>Section VII. 3—Termination or Loss of Interim Status (LOIS)</i> for detailed discussion.																		
40 CFR Part 124, Subpart A																			
Part 124 provisions that are not required for authorization	<p>The following Part 124 sections and paragraphs are not required for authorization.</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">124.1</td> <td style="width: 50%;">124.9</td> </tr> <tr> <td>124.2</td> <td>124.10(a)(1)(iv)</td> </tr> <tr> <td>124.3(b)-(g)</td> <td>124.10(c)(1)(iv)-(viii)</td> </tr> <tr> <td>124.4</td> <td>124.10(d)(1)(vii)(viii)</td> </tr> <tr> <td>124.5(b) and (d)-(g)</td> <td>124.10(d)(2)(iv)</td> </tr> <tr> <td>124.6(b), (c)&(d)(3)(ii)-(v)</td> <td>124.12(b)-(e)</td> </tr> <tr> <td>124.7</td> <td>124.13 through 124.16</td> </tr> <tr> <td>124.8(b)(3), (4) & (8)</td> <td>124.17(b)</td> </tr> <tr> <td></td> <td>124.18 through 124.21</td> </tr> </table>	124.1	124.9	124.2	124.10(a)(1)(iv)	124.3(b)-(g)	124.10(c)(1)(iv)-(viii)	124.4	124.10(d)(1)(vii)(viii)	124.5(b) and (d)-(g)	124.10(d)(2)(iv)	124.6(b), (c)&(d)(3)(ii)-(v)	124.12(b)-(e)	124.7	124.13 through 124.16	124.8(b)(3), (4) & (8)	124.17(b)		124.18 through 124.21
124.1	124.9																		
124.2	124.10(a)(1)(iv)																		
124.3(b)-(g)	124.10(c)(1)(iv)-(viii)																		
124.4	124.10(d)(1)(vii)(viii)																		
124.5(b) and (d)-(g)	124.10(d)(2)(iv)																		
124.6(b), (c)&(d)(3)(ii)-(v)	124.12(b)-(e)																		
124.7	124.13 through 124.16																		
124.8(b)(3), (4) & (8)	124.17(b)																		
	124.18 through 124.21																		
124.6(e)	Only the last sentence of the paragraph applies to draft permits prepared by a State. A State may modify its adoption by reference by deleting the first three sentences. If a State chooses to retain the first three sentences, then the references to "EPA" and "Regional Administrator" should remain.																		
124.10(b)(1)	The last sentence should be deleted because it addresses NPDES permits.																		
124.10(c)(1)(ii)	The reference to "EPA" should remain because it requires that EPA must also receive a copy of the public notice when the draft permit is prepared by the State.																		

Federal Citation	Guidance
124.31(a) 124.32(a) 124.33(a)	States should modify these Federal paragraphs to eliminate references to EPA permits. See Section X for an example of how this can be accomplished.
40 CFR Part 273	
273.20(b) 273.20(c) 273.40(b) 273.40(c) 273.56	The "EPA Acknowledgment of Consent" is an export paper that is prepared by EPA. Thus, a State which adopts Part 273 by reference should not apply the blanket substitution of terms to these sections; the term "EPA Acknowledgment of Consent" should remain as such. (Also see the entry for Part 262, Subpart E, above for a detailed discussion on the governmental functions related to exports that are not delegable to States)
273.32(a)(3)	The paragraph addresses notification to EPA as required by 40 CFR Part 165. The reference to "EPA" should remain; States should replace the citation with the State analog.
40 CFR Part 279	
279.42 279.51 279.56 279.57 279.58 279.62 279.71	"EPA form" and "EPA identification number" should remain as such. Thus, the references to "EPA" at these citations should be excluded from the blanket substitution regarding analogous State terms.
279.43(c)(3)(ii)	The paragraph addresses a report required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations. States should not replace the Federal terms with State analogs.
279.82	<p>This section addresses the use of used oil as a dust suppressant. The function discussed at the paragraph is one that only EPA can conduct. Thus, States should rewrite this section and address whether the State has applied to EPA and has been granted permission to use used oil as a dust suppressant in the State.</p> <p>If the State has been disapproved by EPA or does not want to allow such use of used oil, 279.82(a) should be rewritten so it ends right after "prohibited". 279.82(b) should be written, for example, as: "The list of States given at 40 CFR 279.82(c) are those States which have petitioned EPA to allow the use of used oil as a dust suppressant as per 40 CFR 279.82(b) and EPA has granted permission for such use of used oil in those States".</p>

1999 Rule
33 CSR 20

Response to two separate sets of comments on **Rule 33 CSR 20** from both the United States Environmental Protection Agency and the West Virginia Manufacturers' Association.

The Office of Waste Management (OWM) sincerely thanks both parties for their interest and support in West Virginia's Hazardous Waste Management Rule and the program, in general, and the OWM's specific attempt to secure revised EPA program authorization.

I) The following responses are to the individual comments of the **West Virginia Manufacturers Association**:

Regarding the General Comments, the Office of Waste Management appreciates the support stated by the WVMA toward the goal of EPA authorization. Based on the general comments, WVMA exhibits a comprehensive understanding of the problems encountered within the agency and certain problems posed by the various agency rules and their interrelationship. In fact the OWM agrees with the WVMA that the consolidation of both air and waste RCRA subparts allowing for one permit and one rule would be preferable to the present division of efforts between the OWM and OAQ.

The OWM appreciates the comment.

III. SPECIFIC COMMENTS

A. Section 3.5

The WVMA commends the OWM for maintaining consistency with significant federal changes by incorporating by reference the recent final rules issued May 26, 1998, providing clarification of the exclusion from hazardous waste for certain scrap metals and circuit boards destined for recycling.

B. Section 11.7

Section 11.7 adds a new section allowing the chief to establish an information repository for all materials related to a permit application. The WMVA points out that EPA recognized that the imposition of an information repository was to be reserved for special instances where the level of interest is so great it dictates the establishment of the repository. The WMVA want to make it clear

that the information repository is not a regular requirement of the permit process.

OWM RESPONSE

Section 11.7

Calls for the chief to establish an information repository for all materials related to a permit application. The OWM does agree with the WVMA observation that "the information repository is not a regular requirement of the permit process". Normally, hazardous waste treatment, storage or disposal facility permit applications and related facility information are maintained, as a matter of procedure, in a file room at the Office of Waste Management. In some cases involving extraordinary public interest or controversy, however, the chief may require that an information storage area be established by the permittee to, for instance, serve the needs of the citizenry proximate to the facility. To that end, the concept of a repository was developed by the USEPA and specified in **40 CFR Part 124**. The repository in **Section 11.7** is in keeping with those USEPA procedures.

C. Section 11.9.e

The WVMA is concerned with any changes to the confidentiality provisions. The ability to preclude access to company trade secrets and proprietary information is precious to WVMA members. In today's competitive world, protection of company information is essential to combating infringement of patents and processes. Thus, any changes to the confidentiality provisions are of great concern.

Upon review of the language, the only change is to allow the chief to retain a copy of information that was rejected by the chief as confidential. While the changes seems innocuous on its face, the WVMA submits that the change has much further ramifications for public dissemination of the material the WVMA believes is protected.

Under the current rule, if the person submitting the information fails to establish to the satisfaction of the chief that the material is confidential, the OWM marks the submission as "rejected" and promptly return the information to the person who submitted it. As WVMA understands, the

OWM seeks to retain a copy of the “rejected” material for the purpose of evaluating and measuring prior submission against recent submissions to establish consistency in the OWM application of the rule. While the goal of consistency and fairness is laudable, the WVMA is concerned that this material will then be available pursuant to a Freedom of Information Act request.

According, the WMVA asserts that either the rule be returned to its original statement, or in the alternative, the OWM maintain the retained copy as confidential notwithstanding that it had been originally rejected.

OWM RESPONSE

Section 11.9.e

Pertains to the retention of “rejected” confidential information (information submitted by the permittee with the claim that the particular information contains trade secrets and proprietary information and subsequently rejected as confidential by the chief). The change made from the previous state rule allows the OWM to retain a copy of the “rejected” confidential information to enable a comparison with the next information submittal without the confidentiality claim. To allow that comparison, a copy of the originally “rejected” confidential information would be retained in a locked cabinet and not subject to release.

The OWM, in agreement with the WVMA, does not want a permittee’s trade secrets or proprietary information to be divulged to its competitors, and so, we share the WVMA’s concerns. In the event that a claim of confidential information is rejected, however, the permittee would resubmit the same information rejected as confidential, during the revised permit application or second submittal without the claim of confidentiality. That information, which was originally rejected as “confidential” would then become part of the permittees application and therefore a public record. It is the responsibility of the permittee to thoroughly research its processes and be prepared to convincingly make the case supporting a claim of confidentiality to preclude such a rejection. Also, the agency believes that “rejected” confidential information is subject to the all State appeal procedures afforded any RCRA permit applicant and so disagrees with the WVMA’s final analysis. The retention of “rejected” confidential information is not opening a Pandora’s Box revealing trade

secrets for competitive scrutiny.

More importantly, the USEPA has taken the position that an authorized State agency must have all rights normally available to the USEPA in a matter such as this to remain qualified for delegated program authorization.

D. Table 1, Permit Application Fee Schedule

The WVMA applauds the proposed reduction in fees for Class I permit modifications under 40 CFR 270.42; however, the WVMA submits that \$500 remains too high in relation to the resources expended in processing a Class I permit modification. The WVMA suggests a \$50 fee for Class I modifications.

Under 40 CFR 270.42, a Class I modification, for example, is administrative and information changes; correction of typographical errors; equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls); changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance); changes in name, address, or phone number of coordinators or other persons or agencies identified in the contingency plan. Thus, the review of the proposed change by the OWM is more ministerial than substantive. Accordingly, the fee ought to reflect the minimal effort involved in review of the permit.

OWM RESPONSE

The Class 1 Permit modifications have been reduced substantially from \$1250 to \$500 in an attempt to reduce the financial burden on the permit applicant. Some Class 1 Permit modifications, however, continue to necessitate technical review by permitting personnel, consuming agency person-hours in both the review process and in merely managing the accompanying paperwork for the modification. The OWM has structured hazardous waste permitting fees substantially lower than many other states and considers \$500 as a significant and fair reduction from the original \$1250 amount for Class 1 Permit modifications. Over the next year, Class 1 Permit modifications will be evaluated and a two-tiered approach containing even lower costs for certain Class 1 Permit modifications may be attainable.

II) The following are in response to the **United States Environmental Protection Agency (USEPA)** comments:

The Office of Waste Management is appreciative of EPA Region III's comments regarding the 1999 proposed Rule.

SPECIFIC COMMENTS

1. 124.5(c) 11.9.b.1., p.28

In the first sentence, the State should correct the internal reference "11.9" to read "11.10" which addresses "Draft Permits".

2. 124.10(a)(2) 11.12.b., p.30

In the first sentence, the State should correct the internal reference "11.10" to read "11.9" which addresses "Modifications, Revocation and Reissuance, or Termination of Permits".

3. 124.14(b)(1) 11.15.a.1, p.33

The State should correct the internal reference to "11.9" to read "11.10" which addresses "Draft Permits".

4. 124.14(b)(3) 11.15.a.3, p. 34

The State should correct the internal reference to "11.15" to read "11.12" to properly correspond to the Federal code's reference to §124.10.

5. 124.17(a)(1) 11.17.a.1., 34

In the first sentence, West Virginia should correct "on the draft permit" to read "of the draft permit".

6. 124.17(a)(2) 11.17.a.2., p. 34

The State should insert "the" between "on" and "draft". This typographical error was addressed in specific comment 14 of the initial review.

7. 270.2 "RCRA permits" 11.3.a., p.22

In the third sentence, the State should change "11.4 through 11.14" to "11.5 through 11.18" to be consistent with the reorganization of 33-20-11.

8. 270.12 11.20., p.37

In the last line of this provision, West Virginia should replace "11.17" with "11.19" which addresses "Public Access to Information".

9. 124.10(c)(1)(ix)(C) 11.12.d.1.D.(c), p. 31

In the parenthetical, West Virginia may want to replace both occurrences of "Chief" with chief". Throughout the rules the State does not capitalize the word "chief".

10. 124.14(b) & (c) 11.15., pp. 33-34

Throughout this section, the State capitalizes the word "Section" which is inconsistent with the use of the word in other provisions. The State may want replace "Section" with "section" for internal consistency.

Specific EPA comments 1 through 10 above have been responded to by making the indicated changes in the Rule.

1. 124.3(f) 11.8.d., p.27

In the proposed rules addressed by the initial review, West Virginia included analogs to 124.3(c)-(g) at 11.7.b. through 11.7.f. These provisions are not required for authorization. In the final proposed rules, the State has removed its analog to 124.3(c) (previously 11.7.b.) while retaining the analogs to 124.3(d)-(g) at 11.8.b. through 11.8.e. The provision at 11.8.d. defines "effective date" by referencing "11.7.b". In addition, the provision at 11.8.e. relies on this definition of "effective date". For clarity, the State should either: (1) remove the provisions at 11.8.d. and 11.8.e. since the State no longer has an analog to 124.3(c), or (2) adopt an analog to 124.3(c) and at 11.8.d., replace "11.7.b." with the State's analog to 124.3(c).

OWM RESPONSE

The OWM has adopted an analog to Section 124.3(c) at 11.8.b. and has corrected the reference at 11.8.e. to refer to 11.8.b. rather than 11.7.b.

2. 124.8(a) 11.11.a., p. 29

The provision at 11.11.a. explains when the State must prepare a fact sheet for a draft permit. However, at 11.10.d. the State requires that all draft permits prepared by the chief be accompanied by a fact sheet. For clarity, West Virginia should remove the phrase “for a major hazardous waste management facility or for each draft permit which the chief finds is the subject of wide-spread public interest or raises major issues”. The first sentence should be changed to “A fact sheet shall be prepared for every draft permit”.

OWM RESPONSE

In 11.11.a. the State OWM has struck through the words “major” and “or” for each draft permit”. This results in a fact sheet being prepared for every draft permit for a hazardous waste management facility which the chief finds is the subject of wide-spread public interest or raises major issues. The definition of major hazardous waste management facility is archaic and has been removed from the rule.

3. 124.10(c)(1)(ii) 11.12.d.1.B., p. 30 (was 11.11.c.1.B. in draft proposed regs.)

West Virginia has revised this provision based on the suggestions in specific comment 4 of the initial review. However, where the Federal provision refers to “404” permits the State incorrectly refers to “42 U.S.C. § 1344”. The correct citation for § 404 of the Federal Water Pollution Control Act is 33 U.S.C. § 1344. For clarity, the State should either replace “42 U.S.C. § 1344” with “404”, or correct the citation.

OWM RESPONSE

The State has corrected the citation from 42 U.S.C. to 33 U.S.C., in rule 11.12.3.1.B.

4. 124.10(c)(1)(x)(A) & (B) 11.12.d.1.D.1., p. 31
11.12.3.1.D.ii., p. 31

The State has adopted these provisions as subparagraphs of the provision found at 11.12.d.1.D. which is analogous to 124.10(c)(1)(ix). For clarity, West Virginia should not have these

provisions as subparagraphs of 11.12.d.1.D. because the provisions are unrelated. The provision at 11.12.d.1.D. requires notice to be given to persons on a mailing list, while the provisions at 11.12.d.1.D.i. and 11.12.d.1.D.ii. require notice to be given to specified units of government. The State can correct this problem by redesignating 11.12.d.1.D.i. and 11.12.d.1.D.ii. As 11.12.3.1.E.i. and 11.12.d.1.E.ii.

OWM RESPONSE

The State has redesignated the two rules from 11.12.d.1.D.i. to 11.12.d.1.E.; 11.12.d.1.D.ii. to 11.12.d.1.F. because 11.12.d.1.A. through F are an inclusive list.

5. 124.10(d)(1)(iv) 11.12.e.4., p.32 (was 11.11.d.1.D in draft proposed regs).

West Virginia has revised this provision based on the suggestions in specific comment 6 of the initial review. However, the State has removed the language referring to the permit application. For clarity, the State should revise “of the draft permit and fact sheet” to “of the draft permit, fact sheet, and the application”.

OWM RESPONSE

The State has added the term “the application” to the terms draft permit and fact sheet.

6. 124.12(a)(3) 11.14.c.1. and 11.14.d. through 11.14.f, p. 33

The provision at 11.14.c.1. should not be a subparagraph of 11.14.c. The provision at 11.14.c.1. requires that public notice of a hearing be given as specified in 11.12. This requirement should apply to public hearings conducted pursuant to 11.14.a. and 11.14.b., too. For clarity, the State should redesignate 11.14.c.1. as 11.14.d. and redesignate 11.14.d. through 11.14.f. as 121.14.e. through 11.14.g.

OWM RESPONSE

The State has redesignated 11.14.c.1 as 11.14.d and redesignated 11.14.d. through 11.14.f. as 11.14.e. through 11.14.g.

7. 124.14(b) and (c) 11.15, pp. 33 & 34

West Virginia has included this section regarding the reopening of extension of the public comment period. This section, which was not included in the draft proposed rules, is analogous to 40 CFR 124.14(b) and (c) which are not required for authorization. However, the State has not adopted an analog to 124.14(e) which requires that a public notice be issued for the actions described in 124.14(b)&(c). For additional clarity and consistency with the Federal code, West Virginia should add an analog to 124.14(e) to explicitly require public notice be issued under 11.12.

OWM RESPONSE

The State had added 11.15.c. (analog 124.14(c)) to explicitly require public notice under 11.12.

8. 124.32.(b)(1) 11.6.b.2., p.25

For clarity, the State may want to replace the period at the end of this provision with “; and” this provision is the second item in a list of three items found at 11.6.b.1. through 11.6.b.3.

OWM RESPONSE

The State has replaced the period at the end of 11.6.b.2. with a semicolon and the word “and” because to clarify that this item is one of three items.

2. Import/Export Requirements.

Import/Export Requirements - EPA Headquarters has informed this Regional Office that the State’s previous approach to import/export requirements in their regulations do not meet the requirements for authorization and are not consistent with the national approach for imports/exports of hazardous waste. The Regional Office is not requesting that the State review how entries are made at the following cites and change the way the State is incorporating these provisions by reference. The Region suggests using the attached text (National Incorporation by Reference Guidance) which

should assist in incorporating these provisions by reference.

Incorporation of 40 CFR 262 Subparts E & F at 33-20-5.3 & 5.4. Citation at 33-20-8.3 - In relation to 40 CFR 265.12(a). The Office of Waste Management should use similar language found at 33-20-7.4. Citation at 33-20-13-6, Exports of Universal Waste.

OWM RESPONSE

A. Imports/Exports

Part 262, Subpart E. The OWM has changed subsection 5.3. to adopt exports of hazardous waste. This particular adoption by reference without the substitution of state terms of EPA terms enables the EPA to enforce the state rule through its federal program.

Part 262, Subpart F. Subsection 5.4 formerly excepted or excluded imports of hazardous waste from adoption by the state. The OWM has eliminated or deleted the exclusion of 40 CFR, subpart F and, therefore, 40 CFR part 262, subpart F becomes enforceable in the State.

Part 262, Subpart H. A completely new provision was added at Subsection 5.4, the new provision, Subpart H deals with the transfrontier shipments of hazardous waste for recovery within the Organization for Economic Cooperation and Development (OECD).

3. Additional Editorials

1. Regulatory Revision Checklist 153 revised the paragraphs at 40 CFR 261.5(f)(3)(iv) and (g)(3)(iv) and added paragraphs at 40 CFR 261.5(f)(3)(v) and 9(g)(3)(v). Prior to this change, the provisions at (f)(3)(iv) and (g)(3)(iv) allowed small quantity generators to ensure delivery of hazardous waste to a facility which is permitted to manage municipal or industrial solid waste. At §33-20-3.2, the State has excepted 40 CFR 261.5(f)(3)(iv) and (g)(3)(iv) from the incorporation by reference because West Virginia does not allow small quantity generators to ensure delivery to such facilities. Revision Checklist 153 modified (f)(3)(iv) and (g)(3)(iv) to address only facilities permitted to manage municipal solid waste. It then added (f)(3)(v) and (g)(3)(v) to address facilities permitted to manage non-municipal, non-hazardous solid waste. The state may want to modify §33-20-3.2 to exclude the new paragraphs from its incorporation by reference. This can be accomplished by

revising the provision as indicated below:

- 3.2. The provisions of 40 CFR §261.5(f)(3)(iv) and (v) and 40 CFR §261.5(g)(3)(iv) and (v) are excepted from incorporation by reference. Conditionally exempt small quantity generators shall notify the chief of their hazardous waste activity in accordance with Section 4 of this rule.

OWM RESPONSE

1. The OWM accepts the revision of Section 3.2 as proposed by EPA in its comments.
2. The OWM does not agree with the suggested revision of 11.22 which is as follows: 11.22. 40 CFR §270.27. The provisions of 40 CFR §270.27 are excepted from incorporation by reference. Consult the rules of the office of air quality regarding air emission controls for tanks, surface impoundments, and containers.

The OWM does not wish to except by reference 40 CFR Section 270.27 because design and performance standards for air emission controls for tanks, surface impoundments, and containers are an integral part of the Part B permit application. Not only would the Part B application be incomplete without that information, the units would become, for all intents and purposes, unregulated. The OWM wants this information to be available in the Part B for agency and public review.

Finally, the OWM sincerely thanks the USEPA and the WVMA for their interest and involvement in the 1999 Hazardous Waste Management Rule.



FILED

SEP 23 10 22 AM '98

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

September 23, 1998

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mike Dorsey
WV Division of Environmental Protection
1356 Hansford Street
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Hazardous Waste Management, 33CSR20**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency _____
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Department of Environmental Protection- Office of Waste Management

Subject: Hazardous Waste Management

CSR Cite: 33CSR20

Counsel: JAA

PERTINENT DATES

Filed for public comment: June 22, 1998
Public comment period ended: July 22, 1998
Filed following public comment period: August 3, 1998
Filed LRMRC: August 3, 1998
Filed as emergency: n/a

OFFICE OF THE CLERK
SECRETARY OF STATE

AUG 20 10 35 AM '98

FILED

Fiscal Impact: None.

ABSTRACT

Brief Summary

The rule changes update federal references and modify certain provisions to bring the rule into compliance with new federal requirements. In addition to updates to Code of Federal Rule cites, sections of the rule relating to application fees, public participation and notification, creation of an information repository, permit application and modification requirements all are revised. These changes are at the request of the federal Environmental Protection Agency.

Section Summary

Several places throughout the rule, Code of Federal Rules

cites are updated.

Section 2.1.a.1 has been deleted. This section provides a definition of "major facility."

Section 11 has been rewritten. Section 11.5 alters current public notice requirements and provides for preapplication public meetings and notice for class 3 modifications to existing hazardous waste permits. Class 3 modifications represent a significant change to an existing hazardous waste permit. These changes are currently required in the existing rule by reference to the federal regulations, and this change adds them in the state requirements. Sections 11.5.a through 11.5.d provide guidelines for the preapplication public meeting and notification process. Section 11.6 now also requires public notice and comment for proposed permit renewals of existing permits. The notice criteria are similar to the existing notice requirements once a permit has been approved by the agency. These requirements are added in Section 11.12, resulting in this additional public notice and comment period. These changes are also currently required by federal rule.

The only substantive change in the rule not required by the EPA is contained in Table 1 relating to miscellaneous permits, which reduced the fee for a Class 1 permit modifications from \$1,250 to \$500.

AUTHORITY

Statutory authority: W.Va. Code, §22-18-6 which reads as follows:

(a) The director has overall responsibility for the promulgation of rules under this article [Hazardous Waste Management Act.] The director shall promulgate the following rules, in consultation with the department of health and human resources, the office of emergency services, the public service commission, the state fire marshal, the department of public safety, the division of highways, the department of agriculture, and the environmental quality board. In promulgating and revising such rules, the

director shall comply with the provisions of chapter twenty-nine-a of this code, shall avoid duplication to the maximum extent practicable with the appropriate provisions of the acts and laws set out in subsection (b), section five of this article and shall be consistent with but no more expansive in coverage nor more stringent in effect than the rules and regulations promulgated by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act....

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes, except that the authorizing statute [above] requires consultation with the listed state agencies regarding changes to this rule. I would recommend that the next time the agency amends the rule that the agency mail each listed agency a copy of the proposed rule asking for their comments and include these comments in its response to public comments, and provide with the rule a statement that the agency had complied with this statutory requirement.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.