

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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

AGENCY: WV Division of Environmental Protection
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: 20

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

B.F. Smith
Authorized Signature
B. F. Smith, P.E., Chief

11.20



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

CECIL H. UNDERWOOD
GOVERNOR

JOHN E. CAFFREY
COMMISSIONER

July 28, 1997

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

RE: 33CSR1 - Hazardous Waste Management Rule

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office and Legislative Rulemaking notice of Agency Approval of the above-referenced 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 at 759-0515.

Sincerely yours,


John E. Caffrey
Commissioner

JEC:cc

Attachment

DATE: July 31, 1997

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: H. Michael Dorsey, Assistant Chief
WV Division of Environmental Protection

LEGISLATIVE RULE TITLE: Title 33, Series 20

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

2. a. Date filed in State Register with Notice of Hearing
June 18, 1997

b. What other notice, including advertising, did you give of the hearing?
State wide news release

c. Date of Hearing(s) July 22, 1997

d. Attach a list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
August 1, 1997

f. Name and phone number(s) of agency person(s) to contact for additional information:
H. Michael Dorsey, Assistant Chief, Compliance Monitoring and Enforcement
Office of Waste Management
1356 Hansford Street, Charleston, WV 25301-1401
Telephone: (304) 558-5989

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

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

N/A

b. Date of hearing: _____

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

N/A

d. Attach findings and determinations and reasons:

Attached _____

**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.

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.

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:

At their meeting, July 2, the Environmental Protection Advisory Council reviewed and discussed this rule - there were no substantive changes as a result of their discussion. See attached minutes of that meeting.

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 2, 1997 - Office of Air Quality's Conference Room

The seventh meeting of the DEP Advisory Council was held July 2, 1997 in the Office of Air Quality's Conference Room in Charleston. The meeting was called to order at 1:00 p.m. by Chairman Jack Caffrey.

Attending:

Advisory Council Members:

Jack Caffrey, Chairman
Jacqueline Hallinan
Larry Harris
Martha Moore
William Raney
Rick Roberts
William Samples

DEP:

Mark Scott	John Johnston
Cap Smith	John Benedict
Mike Dorsey	Lucy Pontiveros
Russ Hunter	Karen Watson
Ted Streit	
Gene Coccari	

Discussion:

1. Review minutes of May 5, 1997 meeting.

The minutes of the May 5 meeting were approved without amendment.

2. Review Proposed DEP Rules.

In accordance with WV Code §22-1-3(c) which requires the Director of the Division of Environmental Protection to consult with the Advisory Council members prior to proposing any new rule (or amendments to a rule), the following rules were presented to the members. Mark Scott told the Council members that if they have comments concerning the amendments to the rules they will be made part of the rule package when it is filed with Legislative Rule-Making and the Secretary of State's Office August 1. The Council members may also submit written comments to Carrie Chambers until the close of each respective public hearings. These will also be made part of the rule package when filed.

a) Office of Mining and Reclamation - 38CSR2 "Surface Mining Reclamation Rule":

Russ Hunter, Counsel for OMR, explained the proposed amendments to the Surface Mining Rule. He said the amendments mainly relate to four areas: 1) to allow for coal removal incidental to commercial development of real estate; 2) remining provisions; 3) special reclamation costs; and 4) ownership and control issues.

Gene Coccari, Manager of the Ownership and Control Unit in the Office of Mining and Reclamation, briefed Council members on amendments to that section of the rule. He explained that the proposed state rules appear to be more stringent than the interim federal rule currently in place in that the proposed rules allow DEP to link and block parent companies of permittee, which is not specifically addressed in the federal rule.

b) Office of Waste Management - 33CSR20 "Hazardous Waste Management Rule":

Mike Dorsey, Office of Waste Management, explained that the Hazardous Waste rule is updated annually to reflect changes in the federal regulations and were not substantive changes. He said there are two other amendments in the rule: 1) the appendix that currently contains a synopsis of the small quantity generator rule has been eliminated; and 2) a change in the groundwater monitoring requirements for hazardous waste permits (which is being done in conjunction with a change in the groundwater rule). Also, the rule is amended by clarifying what information is to be included in the administrative record of a permit.

In response to a question by Bill Raney, Mike explained that the proposed rule differs from existing federal requirements in three ways: 1) We require all generators of hazardous waste to notify of their activity, EPA does not require conditionally-exempt small quantity generators (CESQGS) to notify; 2) The EPA regulations say that CESQGS can put their wastes into municipal landfills if they are permitted to accept that waste. West Virginia's Solid Waste rule states that no hazardous waste may go into the state's landfills; therefore, none are permitted to accept the waste; and 3) In the permitting requirements, we have given the chief of Waste Management greater latitude in deciding what sampling parameters must be utilized and what frequently may be required at permitted facilities than the federal rule.

c) Office of Oil and Gas: 35CSR1 "Miscellaneous Water Pollution Control Rule"; 35CSR2 "Oil and Gas Operations - Solid Waste Rule"; 35CSR3 "Coalbed Methane Wells Rule"; 35CSR4 "Oil and

Gas Wells and Other Wells Rule"; 35CSR5 "Designation of Future Use and Inactive Status for Oil and Gas Wells Rule"; and 35CSR6 "Abandoned Wells Rule":

Ted Streit, Chief of the Office of Oil and Gas, stated that Series 1 through 6 of the Oil and Gas rules were not part of DEP's 1997 Technical Cleanup Bill. Therefore, they are being filed this session to update code references, provisions that are contrary to current law, office, names, titles, punctuation, etc. There are no substantive changes to these rules.

Ted said two additional oil and gas rules - 38CSR16 "Certification of Gas Wells" and 38CSR14 "Dam Safety" are being repealed. 38CSR16 is being repealed because the underlying state and federal statute that required the agency to classify the wells no longer exists, and 38CSR14 is being repealed and a comparable rule in the Office of Water Resources (47CSR34 - "Dam Safety") enforces dam safety.

d) Office of Air Quality - 45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage or Disposal Facilities"; 45CSR33 "Acid Rain Provisions and Permits"; 45CSR44 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"; 45CSR23 "To Prevent and Control Emissions From Municipal Solid Waste Landfills"; and 45CSR7 "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations:"

John Johnston, Chief of the Office of Air Quality, presented Air Quality's proposed rule amendments to the Council. He stated that 45CSR25, 45CSR33, and 45CSR34 were amended to incorporate by reference federal requirements that are necessary to keep the program up to date under Title 5, and that they do not contain any substantive changes.

John said the proposed new rule, 45CSR23 "To Prevent and Control Emissions from Municipal Solid Waste Landfills" will establish standards of performance and emission guidelines for municipal solid waste landfills. The standards will require facilities with municipal solid waste landfill emissions exceeding approximately 55 tons per year to install an air pollution control system within 2.5 years. These standards will also be adopted by reference. The advisory council inquired about the stringency of the rule, the difference between non-municipal and municipal solid wastes, and if the rule will impact landfills that are closed.

John said the agency filed 45CSR7 - "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations" as an emergency rule on June 27 as authorized in HB 2333. This emergency rule will establish specific emissions performance

standards for pot and marble fiberglass operations, and will only affect one existing fiberglass production facility located in Vienna, Wood County. A counterpart, permanent rule effecting the same amendment, has also been filed.

After discussion of OAQ's rules, John Johnston asked John Benedict, Assistant OAQ Chief, to discuss the ongoing Ozone Transport Assessment Group (OTAG) issue and the outcome of meetings with EPA and other affected states.

The Council members inquired about the non-attainment situation in the Weirton area (and other areas in West Virginia). John Benedict briefly discussed the current status of that situation and the possible EPA-imposed sanctions within one year if West Virginia's SO² and PM¹⁰ SIP are deficient.

The Council members were then briefed by Earl Billingsley of the Air Quality Office on the application by Virginia Power for an opacity variance at their Mt. Storm Power plant.

3) Consideration of issues raised at May 5, 1997 meeting.

(1) Mr. Caffrey informed the Council that DEP will hold a training session for DEP staff on how to more effectively work with the Legislature.

(2) Mark explained that the list of policies and procedures requested by the Council members is in the process of being completed. He distributed a list of policies compiled to date. After a brief discussion, Council requested that Mark provide a list of DEP policies and procedures, the title, effective date, policy number, and the name of DEP's office contact for the Council's review.

(3) Mark updated the Council members on the pay equity issue raised in the last meeting and informed them that DEP's EEO coordinator would be undertaking a more detailed study later this year to clarify if DEP has a problem in this area.

(4) The Council members expressed concern over the TMDL issue and why there was such a change in the ranking of streams between the 1994 and 1996 303(d) lists provided to EPA. Council requested an update on this issue at a future meeting.

4) The following issues were discussed for upcoming meetings:

(1) Regulation of the timbering industry - Mark Scott suggested that Bill Maxey, Director of the Division of Forestry, be invited to attend a future Council meeting to discuss this issue;

- (2) The Legislative agenda for the 1998 Session;
- (3) Presentation by DEP's Manager of Information Services on DEP's one-stop grant and our vision of future computer capabilities;
- (4) Acid mine drainage;
- (5) Valley fills and mountain top removal practices at mining operations;
- (6) Industry's concerns about the Office of Oil and Gas as a regulatory agency;
- (7) Status of the Elkins landfill;
- (8) Corps of Engineers nationwide permits and conditions required by DEP in those permits;
- (9) An update of the Volunteer Remediation and Development program;
- (10) Regulation of chicken waste in the poultry industry in the eastern panhandle;
- (11) DEP's proposed consolidated building; and
- (12) Status of the coal mining mitigation, including council consideration of supporting studies funded by DEP's mitigation fund.

A brief discussion was held concerning date and place of the next Council meeting. Bill Raney suggested incorporating the next meeting with the national AML Conference scheduled at Canaan Valley August 17-20.

The meeting concluded at 4:30 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	THREERAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
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.

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.

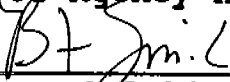
N/A

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

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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

1.4. **Effective Date.** --

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, ~~1995~~ 1996, 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. "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. "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. "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 (g)(3)(iv) are excepted from incorporation by reference. ~~Small quantity generators and conditionally exempt small quantity generators that are in compliance with Appendix i of this rule are deemed in compliance with 40 CFR § 261.5 and other requirements of this rule applicable to small quantity and conditionally exempt small quantity generators.~~ 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 Federal Register 25998 (May 12, 1997) 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(f)~~ §262.10(g). -- The provisions of 40 CFR ~~§ 262.10.(f)~~ § 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(f)~~ § 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 by reference and shall remain the provenance of the environmental protection agency and 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 timeframes set forth in subpart E.

5.4. **40 CFR Part 262, Subpart F.** -- The provisions of 40 CFR part 262, subpart F -- Imports of Hazardous Waste are excepted from incorporation by reference and in addition to the requirements contained therein, any person subject to the provisions of subpart F 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 timeframes set forth in subpart F.

§ 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.

~~7.1.c. Owners or operators of miscellaneous units.~~

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 part 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 ~~except as noted below~~ pursuant to the authority granted the environmental quality board in W. Va. Code, § 22-12-4.

~~7.5.b.1. For the purposes of 40 CFR part 264.94(a)(1), the groundwater protection standards at 33 CSR 23 shall apply.~~

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 §§ 264.343, 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.

§ 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) ~~and 268.44~~ 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) 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." ~~The following additional requirements shall apply to obtain a hazardous waste management permit in West Virginia. All references to 40 CFR part 270 to 40 CFR part 124 shall be deemed to be references to the applicable provisions of subsections 11.4 through 11.14 of this rule. To the extent of any inconsistency with 40 CFR part 270, the specific provisions contained herein shall control.~~

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. ~~using criteria specified at 40 CFR 124.6(a) and (b).~~

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.

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 ~~these rules~~ 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 ~~11.2.~~ 11.5. of ~~these rules~~ 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.

~~11.15.~~ 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.

~~11.16.~~ 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.

~~11.17.~~ 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.

§ 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, ~~lead-acid~~ batteries, and thermostats covered by 40 CFR part 273, mercury containing lamps, commonly known as fluorescent light bulbs, are also covered under part 273 as follows:

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 by reference and shall remain the provenance of the environmental protection agency and in addition to the requirements contained therein, any person subject to the provisions of 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 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 Part § 279.82(b). -- The term EPA at 40 CFR part § 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. **MISCELLANEOUS PROVISIONS APPEAL RIGHTS.**

15.1. The provisions set forth in Appendix 1 are incorporated as a part of this rule. 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
Modification under 40 CFR, 270.41	\$2,500.00
Post-Closure Care Permit	\$15,000.00
Closure Plans	\$1,500.00

APPENDIX-1

~~The following guidelines are applicable to small quantity generators and conditionally exempt small quantity generators. Compliance with the provisions of this Appendix constitutes compliance with this rule. The provisions of this Appendix are the minimal requirements for small quantity generators and conditionally exempt small quantity generators notwithstanding any provision of the code of federal regulations or this rule to the contrary.~~

~~1. Special requirements for hazardous waste generated by small quantity generators.~~

~~1.1. A small quantity generator is a generator of hazardous waste that generates more than 100 kilograms but less than 1000 kilograms of hazardous waste per calendar month.~~

~~1.2. Hazardous waste determination. A person who generates wastes must determine if that waste is hazardous and not excluded from regulation by one of the following methods:~~

~~1.2.a. Applying knowledge of the waste in light of the materials or processes used and knowledge of the characteristic and listed hazardous wastes contained in 40 CFR part 261.~~

~~1.2.b. Testing the waste according to methods set forth in 40 CFR part 261 or set forth in EPA Publication SW 846 as referenced by 40 CFR Part 261.~~

~~1.2.c. Voluntarily declaring the wastes as hazardous and subject to regulation.~~

~~1.2.d. Reviewing the exclusions at 40 CFR parts 261.2(e) and 261.4 to determine if their waste is excluded from regulation.~~

~~1.3. The small quantity generator must notify the chief of hazardous waste generation activities in accordance with the provisions of Section 4 of this rule. A small quantity generator may not treat, store or dispose of, transport or offer for transportation hazardous waste without having received an EPA identification number. In addition, the generator must not offer his hazardous waste to transporters or to treatment, storage or disposal facilities that have not received an EPA identification number.~~

~~1.4. If a small quantity generator treats (other than by elementary neutralization or other excluded methods), accumulates or stores for longer than the time frames set forth in paragraph 1.5. of this Appendix or disposes of hazardous waste on site, the small quantity generator becomes subject to the expanded requirements of 40 CFR Parts 263, 264, 265, 266, 268 and 270 as well as any other applicable parts.~~

~~1.5. The small quantity generator may accumulate and store hazardous waste on site for 180 days from the day it is generated unless the distance that waste must be shipped for proper treatment, storage or disposal is more than 200 miles in which case the small quantity generator may accumulate hazardous waste on site for 270 days provided that the quantity of waste accumulated on site does not exceed 6,000 kilograms.~~

~~1.5.a. If due to unforeseen, temporary and uncontrollable circumstances hazardous waste must remain on site for longer than 180 or 270 days, an extension of up to 30 days may be granted by the chief.~~

~~1.6. Containers. The small quantity generator must accumulate and store hazardous waste in containers or tanks that meet the following requirements in order to be eligible for the reduced requirements of this Appendix.~~

~~1.6.a. Containers must be kept in good condition as defined by the United States department of transportation regulations.~~

~~1.6.b. Containers must be kept closed except when adding or removing waste.~~

~~1.6.c. Containers must be opened, handled and stored in a way which will not cause them to rupture or leak.~~

~~1.6.d. The owner or operator of a small quantity generator facility must inspect hazardous waste container storage areas at least weekly for leaks and/or deterioration and must remediate these conditions, upon detection.~~

~~1.6.e. Incompatible wastes (such as oxidizers and petroleum based degreasers) must not be placed in the same container. Nor shall waste be placed in an unwashed empty container which previously held another material with which it is incompatible. (Other examples of potentially incompatible wastes can be found at 40 CFR part 265, appendix V.)~~

~~1.6.f. Storage containers for incompatible wastes must be separated by means of a dike, berm, wall or other device.~~

~~1.7. Tanks. Small quantity generators who accumulate or store hazardous waste in tanks must comply with 40 CFR § 265.201 in order to be eligible for the reduced requirements of this Appendix.~~

~~1.8. If a small quantity generator closes (permanently removes from service) a container or tank storage area 40 CFR § 265.114 must be followed to insure that no contamination exists or remains at the storage location.~~

~~1.9. Labeling. Containers and tanks accumulating or storing hazardous waste must comply with the following labeling requirements:~~

~~1.9.a. On each container, the date upon which each period of accumulation began must be clearly marked and visible for inspection.~~

~~1.9.b. Each container and tank must be clearly labeled or marked with the words "hazardous waste" while in use on site.~~

~~1.10. Manifest. Small quantity generators that transport or offer for transportation, hazardous waste for off site treatment, storage or disposal must prepare a manifest on the currently approved EPA form according to the instructions that accompany that form and in compliance with 40 CFR 262 subpart B unless the waste is reclaimed under a contractual agreement where:~~

~~1.10.a. — The type of waste and frequency of shipments are specified in the agreement;~~

~~1.10.b. — The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and~~

~~1.10.c. — The generator maintains a copy of the reclamation agreement on site for a period of at least three (3) years after the termination or expiration of the agreement.~~

~~1.11. Record keeping. The small quantity generator must comply with the following record keeping requirements:~~

~~1.11.a. — A copy of each properly completed manifest must be kept on site for at least three (3) years from the date that the waste was accepted by the initial transporter.~~

~~1.11.b.~~ Any test results, waste analyses or other record of a method used to make a hazardous waste determination must be kept on site for at least three (3) years from the date that the waste was sent to on site or off site treatment, storage or disposal.

~~1.11.c.~~ The three (3) year record retention time is automatically extended during the course of any unresolved enforcement action regarding regulated activity, or as requested by the chief.

~~1.11.d.~~ If a copy of the manifest with the handwritten signature of the owner or operator of the designated facility has not been received by the generator within 60 days of the date the waste was accepted by the initial transporter, the generator must submit a legible copy of the manifest with some indication that the generator has not received confirmation of delivery to the chief.

~~1.11.3.~~ The chief, as he or she deems necessary, may require generators to furnish additional reports concerning the quantities and disposition of hazardous wastes.

~~1.12.~~ Preparedness and prevention. Facilities must be maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous wastes or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment and meet the following requirements in order to be eligible for the reduced requirements of this Appendix.

~~1.12.a.~~ Required equipment. All facilities must be equipped with the following unless none of the hazards posed by the wastes handled at the facility could require a particular kind of equipment specified below:

~~1.12.a.1.~~ An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

~~1.12.a.2.~~ A device such as a telephone (immediately available at the scene of operations) or a hand held two-way radio, capable of summoning emergency assistance from local police departments, fire departments or state or local emergency response teams.

~~1.12.a.3.~~ Portable fire extinguishers, fire control equipment (including special extinguishing equipment), spill control equipment and decontamination equipment.

~~1.12.a.4. Water at adequate volumes and pressure to supply water hose streams, or foam producing equipment or automatic sprinklers or water spray systems.~~

~~1.12.b. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment where required must be tested and maintained as necessary to assure its proper operation in time of emergency.~~

~~1.12.c. Whenever hazardous waste is being handled all personnel involved in the operation must have immediate access to an internal alarm or an emergency communication device, either directly or through visual or voice contact with another unless such a device is not required by part 1.12.a.2. of this Appendix. If there is just one employee on the premises while the facility is operating, that employee must have immediate access to a device referenced by part 1.12.a.2. of this Appendix.~~

~~1.12.d. The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation in an emergency unless aisle space is not needed for any of these purposes.~~

~~1.12.e. The owner or operator must attempt to make the following arrangements, as appropriate, for the type of waste handled at the facility and the potential need for the services of these organizations.~~

~~1.12.e.1. Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places when facility personnel would normally be working, entrances to roads inside the facility and possible evacuation routes.~~

~~1.12.e.2. Arrangements designating primary emergency authority to a specific police and a specific fire department where more than one police or fire department might respond and arrangements with any others to provide support to the primary emergency authority.~~

~~1.12.e.3. Arrangements with state emergency response teams, emergency response contractors and equipment suppliers.~~

~~1.12.e.4. Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and~~

~~the types of injuries or illnesses which could result from fires, explosions or releases at the facility.~~

~~1.12.f. — Where state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.~~

~~1.12.g. — At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility in a short period of time) with the responsibility for coordinating all emergency response measures specified in these regulations. This employee is the emergency coordinator.~~

~~1.12.h. — The following information must be posted next to the telephone:~~

~~1.12.h.1. The name and telephone number of the emergency coordinator.~~

~~1.12.h.2. The location of fire extinguishers and spill control equipment and, if present, the fire alarm.~~

~~1.12.h.3. The telephone number of the fire department unless the facility has a direct alarm.~~

~~1.12.i. — The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.~~

~~1.12.j. — The emergency coordinator or his designee must respond to any emergencies that arise and initiate the proper response to the emergency including but not limited to calling the fire department in the event of a fire or remediating a spill.~~

~~1.12.k. — In the event of a fire, explosion or other release that could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must notify the National Response Center at 1-800-424-8802. The report must contain the following information:~~

~~1.12.k.1. The name, address and EPA identification number of the generator.~~

~~1.12.k.2 The date, time and type of incident.~~

~~1.12.k.3. Type and quantity of hazardous waste involved in the incident.~~

~~1.12.k.4. Extent of injuries, if any.~~

~~1.12.k.5. Estimated quantity and disposition of recovered materials, if any.~~

~~1.13. If a small quantity generator either exports or imports hazardous waste out of or into the United States of America, he or she must comply with Subparts E and F or 40 CFR Part 262 respectively.~~

~~1.14 A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards of this rule provided he or she triple rinses each emptied pesticide container that has held an acute hazardous waste with a solvent capable of removing the waste and disposes the pesticide residue on his own farm in a manner consistent with the disposal instructions on the pesticide label.~~

~~1.15. If a small quantity generator does not meet all the requirements set forth herein, the reduced requirements do not apply and the generator will be subject to full regulation.~~

~~2. Special requirements for hazardous waste generated by conditionally exempt small quantity generators.~~

~~2.1. A conditionally exempt small quantity generator is a generator of hazardous waste that produces no more than 100 kilograms of hazardous waste per calendar month or no more than one (1) kilogram of acute hazardous waste and that meets the requirements stipulated below.~~

~~2.1.a. If the generator generates a total of one (1) kilogram or more of acute hazardous waste identified in 40 CFR part 261 in a calendar month, the waste shall be subject to full regulation.~~

~~2.2. The conditionally exempt small quantity generator must make a proper hazardous waste determination as specified in paragraph 1.2. of this Appendix. When determining the amount of hazardous waste generated, a generator need only include those wastes that are generated on site prior to reclamation, and are not excluded under 40 CFR part 261.~~

~~2.3. The conditionally exempt small quantity generator must notify the chief of its hazardous waste generation activity. No~~

~~generator shall treat, store or dispose of, transport or offer for transportation hazardous waste without having received an EPA identification number.~~

~~2.4. A conditionally exempt small quantity generator may accumulate up to 1000 kilograms of hazardous waste or 1 kilogram of acute hazardous waste on site before becoming subject to the requirements of paragraph 1.5. of this Appendix with the exception that:~~

~~2.4.a. A total of 100 kilograms of any residue or contaminated soil, waste or other debris resulting from the clean-up of a spill into or on any land or water of any acute hazardous wastes listed in 40 CFR part 261 may be accumulated before becoming subject to full regulation.~~

~~2.5. Record keeping. The generator must establish and maintain on site a written record specifying the quantity and types hazardous wastes disposed of, the dates the wastes were transported off site and the final disposition of the wastes. The preferred method for this requirement is via the manifest.~~

~~2.6. The generator must either treat or dispose of hazardous waste in an on site facility or ensure delivery to an off site treatment, storage or disposal facility either of which:~~

~~2.6.a. Is permitted, or under interim status, to treat, store or dispose of hazardous waste by a state or the federal government or both;~~

~~2.6.b. Is permitted, licensed or registered by a state other than West Virginia to manage waste generated by conditionally exempt small quantity facilities;~~

~~2.6.c. Beneficially uses or re-uses or legitimately recycles or reclaims the waste, or,~~

~~2.6.d. Treats the waste prior to beneficial use or re-use of legitimate recycling or reclamation.~~

~~2.7. Hazardous waste subject to the reduced requirements of subdivision b may be mixed with non-hazardous waste and remain subject to the reduced requirements even though the resultant mixture exceeds the quantity limitations in paragraph 2.4. of this Appendix unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR part 261 with the following modifications:~~

~~2.7.a. If any person mixes a waste with a hazardous waste that exceeds a quantity exclusion level of paragraph 2.4. of this Appendix, the mixture is subject to full regulations.~~

~~2.7.b. If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR part 279.~~

~~2.8. If a conditionally exempt small quantity generator does not meet all of the requirements set forth herein, the exemption does not apply and the generator will be subject to full regulation.~~



CECIL H. UNDERWOOD
GOVERNOR

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

JOHN CAFFREY, P.E.
DIRECTOR

July 30, 1997

MEMO TO: Mike Dorsey

FROM: Bill Rheinlander

RE: Hazardous waste regulation hearing

A public hearing was held on July 22 and no one attended.

BR/

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, 1997

**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, 1997

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 (formerly, 47 CSR 35), on June 18, 1997. The public comment period expires on July 22, 1997. These comments are offered in accordance with the public notice afforded the proposal of these rules.

The West Virginia Manufacturers Association ("WVMA") is an organization comprised of approximately 250 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.

B. Recognition of Federal Court Decision

The WVMA commends the OWM for acknowledging the federal court decision in *Dithiocarbamate Task Force v. Environmental Protection Agency*, 98 F.3d 13294 (D.C. Cir. 1996) wherein the court vacated the hazardous waste listing of several carbamate wastes. We believe that the recognition and adjustment reflecting the applicable federal law in West Virginia ensures consistency between the federal program and the state program. However, we note that in 33 CSR 20 § 3.4.a “IPBS” should be “IPBC.”

III. SPECIFIC COMMENTS

A. Section 7

In the OWM proposal, section 7, dealing with standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities and incorporating by reference the provisions of 40 CFR 264, the OWM includes owners and operators of miscellaneous units to be considered to be incinerating hazardous waste. The change relates to the cross jurisdictional issue with the Office of Air Quality and the regulation of emissions from hazardous waste treatment, storage and disposal facilities as embodied in 45 CSR 25. The WVMA believes the inclusion of miscellaneous units as incinerators is contrary to federal law, captures non-incinerator miscellaneous units, and is beyond the scope of the authority of the OWM in light of W.Va. Code §§22-1-3 and 22-18-6(a), requiring consistency with federal requirements.

The rule has been proposed to be changed by adding the following:

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.
- 7.1.c Owners or operators of miscellaneous units.

The WVMA speculates that the intent of adding the provision is to acknowledge that a miscellaneous unit may be subject to the provisions of the Office of Air Quality, 45 CSR 25, if the unit emits greater than certain threshold quantities of regulated constituents. However, the WVMA disagrees with the inclusion of miscellaneous units as incinerators simply because they are not “incinerators.” Incinerators is a specifically defined term under 40 CFR §260.10 as is miscellaneous unit. In fact, the definition of miscellaneous unit specifically excludes incinerators. A hazardous waste treatment, storage or disposal unit that is characterized as a miscellaneous unit may not use a combustion technology, yet under the proposal it would be deemed an incinerator. Therefore, the WVMA urges the OWM to delete the underscored language in its entirety.

B. Draft Permits

The WVMA objects to the deletion of the reference to the criteria specified in 40 CFR 124.6(a) and (b), which form the basis for preparation of a draft permit or denial of the application. The criteria set forth in the section is federal regulation that should not be deviated from without sufficient justification outlined in accordance with W.Va. Code §22-1-3. (See Item C, below).

C. Draft Permits and Administrative Record

While the WVMA believes advanced notice of any deficiency to the applicant prior to denial of the permit is desirable as stated in 33 CSR 20, §11.5.e, we are confused by the need to insert this language and the new language in section 11.15. In both instances, the requirements of the fact sheet, the draft permit and the administrative record as described in the proposed section 11.15 are embodied in 40 CFR 124 which is incorporated by reference. Further clarification may be desirable to remove any internal contradiction in the new sections and any contradiction with the incorporated federal rules. The WVMA prefers that the state rule incorporate by reference the provisions of the

federal rule to ensure consistency. The federal procedures for decision-making in the issuance of RCRA permits embodied in 40 CFR parts 124 and 270 that are incorporated by reference should be retained and the proposed language stricken.

D. LDR Notification

Currently, each time a shipment of waste is sent, the generator must include land disposal restriction notification. However, if the waste is the same that is routinely shipped from a particular facility, then the paperwork associated with each shipment is unnecessary. In 62 Fed. Reg. 25998 (May 12, 1997), EPA amended the rules in 40 CFR part 268 to require only a one-time notification, rather than with each shipment of hazardous waste. The one-time notification would apply to shipments of all restricted hazardous wastes including lab packs. No new notification would be required unless there were a change in the waste, process or receiving facility. The WVMA urges adoption of the paperwork reduction aspects of the federal register. However, without further analysis, the WVMA does not believe that it is prudent to adopt the proposed treatment standards for waste from wood preserving facilities at this time. Accordingly, the WVMA requests the OWM to adopt the following language:

10.6 The provisions of 40 CFR §§ 268.1, 268.4, 268.7, and 268.9 as amended and finalized in 61 Fed. Reg. 25998 (May 12, 1997) are hereby incorporated by reference.

E. Identification and Listing of Hazardous Waste

In the May 12, 1997 Federal Register, EPA also finalized a rule that excluded certain processed scrap metal and shredded circuit board that are being recycled from RCRA regulation. In order to be consistent with the Federal regulations and to promote recycling of scrap metal and circuit boards, the WVMA supports inclusion of this portion of the final rule in the state's proposed

rule. Accordingly, the WVMA suggests adding the following language to a new subsection 3.5:

3.5 The provisions of 40 CFR §§ 261.1, 261.2, 261.4 and 261.8 as amended and finalized in 61 Fed. Reg. 25998 (May 12, 1997) are hereby incorporated by reference.

III. 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 you earliest possible convenience.

Respectfully submitted this 22nd day of July, 1997.

Karen S. Price, President
West Virginia Manufacturers Association
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RESPONSE TO COMMENTS
OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION
(WVMA)
ON THE
HAZARDOUS WASTE MANAGEMENT RULE (33 CSR 20)

RESPONSE TO COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION (WVMA)
ON THE
HAZARDOUS WASTE MANAGEMENT RULE (33CSR20)

Comment IIB: The WVMA notes that at 3.4.a the abbreviation IPBS is used instead of the correct IPBC.

The Office of Waste Management (OWM) will correct this typographical error.

Comment IIIA: The WVMA objects to the inclusion of miscellaneous units to the listing of persons considered to be incinerating hazardous waste at 7.1.c.

OWM concurs with this comment and will remove 7.1.c.

Comment IIB&C: The WVMA objects to the deletion of references to 40 CFR 124.6(a) and (b) and the substitution of new language at 11.5 and 11.15.

OWM appreciates WVMA's concerns regarding its deviation from a strict adoption by reference policy; however, in these two sections OWM is attempting to clarify and simplify the somewhat confusing requirements of 40 CFR 124.6(a) and (c). We think that the current changes ease the burden on the regulated community by presenting the relevant requirements in one location (11.15). Because of this OWM will let the proposed rule remain as submitted. As always, OWM is willing to work with WVMA and other interested parties to seek out the most sensible way to achieve the goal of environmental permitting.

Comment IIID:

The WVMA requests that OWM adopt the following language that will bring West Virginia's Land Disposal Restrictions into line with those of the United States Environmental Protection Agency (USEPA): **10.6 The provisions of 40 CFR §§268.1, 268.4, 268.7 and 268.9 as amended and finalized in 61 Federal Register 25998 (May 12, 1997) are hereby incorporated by reference.** *OWM agrees with this request and will add the suggested language with a modification for clarification as follows:*

"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) are hereby incorporated by reference."

Comment IIIE:

The WVMA requests that certain processed scrap metals and shredded circuit boards that are being recycled be excluded from hazardous waste regulation, in order to be consistent with recent USEPA changes and proposed the following language: **3.5 The provisions of 40 CFR §§261.1, 261.2, 261.4 and 261.8 as amended and finalized in 61 Federal Register 25998 (May 12, 1997) are hereby incorporated by reference.**

OWM agrees with this request and will add the suggested language with a modification for clarification as follows:

"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 Federal Register 25998 (May 12, 1997) are hereby incorporated by reference."

EXPLANATION OF ADDITIONAL
NON-SUBSTANTIVE CHANGES
MADE TO 33-20 FOR
AGENCY APPROVAL OF PROPOSED RULE

Typographical Error: At 3.4.a., the abbreviation IPBS is used instead of IPBC when discussing 3-iodo-2-propynol n-butylcarbamate waste.

EXPLANATION OF ADDITIONAL
SUBSTANTIVE CHANGES
MADE TO 33-20 FOR
AGENCY APPROVAL OF PROPOSED RULE

Removal of 7.1.c.: This paragraph has been struck through in its entirety because it was determined that a hazardous waste treatment, storage or disposal unit that is characterized as a miscellaneous unit may not necessarily use a combustion technology, yet under the proposed language of paragraph 7.1.c., it would be deemed an incinerator. This is contrary to federal law, because it captures non-incinerator miscellaneous units.

Adoption of additional Land Disposal Restriction Language: Adopting 40 CFR §§268.1, 268.4, 268.7 and 268.9, as amended and finalized in 61 Federal Register 25998 (May 12, 1997) would reduce the amount of paperwork associated with Land Disposal Restriction Notification. It would allow for a one-time notification rather than with each shipment of hazardous waste as is now required.

Adoption of additional Exclusion From RCRA Regulation Language: Adopting 40 CFR §§261.1, 261.2, 261.4 and 261.8, as amended and finalized in 61 Federal Register 25998 (May 12, 1997) will exclude certain processed scrap metal and shredded circuit board, that are being recycled, from RCRA regulation. The addition of this language will allow consistency with the federal regulations and will promote recycling of scrap metal and circuit boards.