

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

Form #6

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APR 29 2 21 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

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

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: \_\_\_\_\_

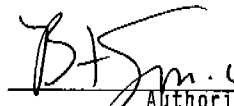
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) H.B. 4136

SECTION 64-3-1(c), PASSED ON March 14, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: July 1, 1998

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

\$8.00



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

CECIL H. UNDERWOOD  
GOVERNOR

May 1, 1998

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

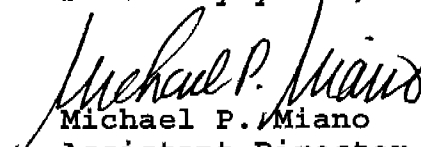
RE: 33CSR20 - "Hazardous Waste Management Rule"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your office as a final rule authorized by HB 4136, signed by Governor Underwood April 2, 1998.

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,

  
Michael P. Miano  
Assistant Director

JEC:cc

Attachment

cc: Terrie Sangid, OWM

**RULE PROMULGATION HISTORY ABSTRACT**

**TITLE 33  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF WASTE MANAGEMENT**

**HAZARDOUS WASTE MANAGEMENT RULE**

**Series 20**

June 18, 1997	Filed with Secretary of State - Notice of Public Hearing
July 22, 1997	Public Hearing Held
	End of Comment Period
August 1, 1997	Agency Adopted Rule Filed with Secretary of State and Legislative Rule Making Review Committee
November 18, 1997	Rule Making Review Committee Meeting
March 14, 1998	H.B. 4136 Passed the Legislature
April 12, 1998	H.B. 4136 Approved by Governor
April 29, 1998	Final Filed with Secretary of State
July 1, 1998	Effective Date

FILED

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

APR 23 2 21 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 20  
HAZARDOUS WASTE MANAGEMENT RULE

§ 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.** -- July 1, 1998

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

1.6. **Incorporation by Reference.** -- Whenever either federal statutes or regulations or state statutes or rules are incorporated by reference into this rule, the reference is to that statute or regulation in effect on July 1, 1996, 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. 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(g).** -- The provisions of 40 CFR § 262.10.(g) shall be excepted from incorporation.

**5.2.a.** A person who generates a hazardous waste as defined by 40 CFR part 261 is subject to the compliance requirements and penalties prescribed in W. Va. Code, §22-18-1 et seq. if he or she does not comply with the requirements of this rule. This rule in

no way abrogates the enforcement authority of the Resource Conservation and Recovery Act of 1976 § 3008.

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

**5.3. 40 CFR Part 262, Subpart E.** -- The provisions of 40 CFR part 262, subpart E -- Exports of Hazardous Waste are excepted from incorporation 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.

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

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

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

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

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

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

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

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

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

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

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

**7.7. Provisions Relating to Incinerators.** -- The provisions of 40 CFR §§ 264.343, 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) 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."

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

**11.4. Application Fees.**

**11.4.a.** Any person who applies for a permit for the construction or operation of a hazardous waste management facility, or both, shall submit as part of said application a money order or cashier's check payable to "The Hazardous Waste Management Fund" of the state treasury. Persons required to obtain a permit-by-rule pursuant to these regulations are not required to pay a permit application fee.

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

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

**11.5. Draft Permits.**

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

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

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

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

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

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

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

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

**11.5.e.** If the chief tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application shall be accompanied with a statement of basis. If the chief's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection 11.5 of this rule.

**11.6. Fact Sheet.**

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

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

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

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

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

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

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

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

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

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

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

**11.7. Public Access to Information.**

**11.7.a.** Any records, reports, or information and any permit, permit applications, and related documentation within the chief's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the chief that such records, reports, permit documentation, or information, or any part hereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the chief shall consider, treat, and protect such records as confidential.

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

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

**11.7.d.** No information shall be protected as confidential information by the chief unless it is submitted in accordance with the provisions of subdivision 11.7.c. of this rule and no information which is submitted in accordance with the provisions of subdivision 11.7.c. of this rule shall be afforded protection as confidential information unless the chief finds that such protection is necessary to protect trade secrets. The person who submits information claimed to be confidential shall receive written notice from the chief as to whether the information has been accepted as confidential or not.

**11.7.e.** All information which meets the tests of subdivision 11.7.d. of this rule shall be marked with the term "ACCEPTED" and shall be protected as confidential information. If said person fails to satisfactorily demonstrate to the chief that such

information in the form presented to him meets the criteria of subdivision 11.7.d. of this rule, the chief shall mark the information "REJECTED" and promptly return such information to the person submitting such information.

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

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

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

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

**11.8. Public Participation in Permit Process.**

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

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

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

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

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

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

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

**11.8.e.1.** The applicant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **11.10. Contents of Public Notice.**

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

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

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

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

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

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

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

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

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

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

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

**11.11. Public Comment and Request for Public Hearings.** During the public comment period provided that any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subsections 11.13. and 11.14. of this rule.

**11.12. Public Hearings.**

**11.12.a.** The chief shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit(s). The chief may also hold a public hearing at his discretion whenever, for instance, such hearing may clarify one or more issues involved in the permit decision.

**11.12.b.** The chief shall hold a public hearing upon receiving written notice of opposition to a draft permit and a request for public hearing within forty-five (45) days of the public notice. Whenever possible the chief shall schedule a hearing under

subsection 11.12. of this rule at a location convenient to the nearest such proposed facility. Public notice of the hearing shall be given as specified in subsection 11.8. of this rule.

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

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

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

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

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

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

**11.14. Response to Comments.**

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

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

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

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

**11.15. Administrative Record**

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

- (1) The application and any supporting data furnished by the applicant;
- (2) The draft permit or notice of intent to deny the application or to terminate the permit;
- (3) The fact sheet;
- (4) All documents cited in the fact sheet; and

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

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

- (1) Administrative record for the draft permit;
- (2) All comments received during the public comment period provided under subsection 11.8 of this rule (including any extension or reopening under subsection 11.13 of this rule);
- (3) The tape or transcript of any hearing(s) held under subsection 11.12 of this rule;
- (4) Any written material submitted at such hearing;
- (5) The response to comments required by subsection 11.14 of this rule which identified and supports any change made in the draft permit and any new material placed in the record under that subsection;
- (6) Other documents contained in the supporting file for the permit;
- (7) An addendum to the fact sheet if needed; and
- (8) The final permit.

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

**11.15.d.** Material readily available at the issuing agency office or published material that is generally available, and that is included in the administrative record under subdivisions 11.15.a. and 11.15.b. of this rule, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

**11.16. 40 CFR § 270.12.** The provisions of 40 CFR § 270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W. Va. Code, § 22-18-12 and subsection 11.7. of this rule.

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

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

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

**12.1. Recording Requirement.** -- The owner of the property on which a hazardous waste management facility is located must record, in accordance with state law, a notation on the deed or lease to the facility property -- or on some other instrument that is

normally examined during title search -- that will in perpetuity notify any potential purchaser of the property that:

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

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

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

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

### **§ 33-20-13. UNIVERSAL WASTE RULE.**

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

**13.2** In addition to pesticides, batteries, and thermostats covered by 40 CFR part 273, mercury containing lamps, commonly known as fluorescent light bulbs, are also covered under part 273 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 § 279.82(b).** -- The term EPA at 40 CFR § 279.82(b) shall have the meaning of United States environmental protection agency.

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

#### **§ 33-20-15. APPEAL RIGHTS.**

15.1. Any person aggrieved or adversely affected by the failure or refusal of the director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the director under the provisions of this rule, may appeal to the environmental quality board in accordance with the provisions of article 1, chapter twenty-two-b (§22B-1-1 et seq) of the West Virginia Code.

**TABLE 1  
PERMIT APPLICATION FEE SCHEDULE**

**STORAGE**

<b>EPA CODE ACTIVITY</b>	<b>FEE</b>	<b>FEE</b>
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**

<b>EPA CODE ACTIVITY</b>	<b>FEE</b>	<b>FEE</b>
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**

**STORAGE**

<b>EPA CODE ACTIVITY</b>	<b>FEE</b>	<b>FEE</b>
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**

<b>EPA CODE ACTIVITY</b>	<b>FEE</b>	<b>FEE</b>
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

4137

H. B. 4137

1 Bill-DEP, Ha

(By Delegates Hunt, Linch, Compton, Jenkins,  
Faircloth and Riggs)

2

3

[Introduced January 30, 1998; referred to the

4

Committee on the Judiciary.]

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33-20

6

7

8

9

10 A BILL to amend and reenact section one, article three,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of environmental  
14 protection to promulgate a legislative rule relating  
15 to hazardous waste management.

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

17 That section one, article three, chapter sixty-four of  
18 the code of West Virginia, one thousand nine hundred  
19 thirty-one, as amended, be amended and reenacted, to read  
20 as follows:

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

23 **§64-3-1. Division of environmental protection.**

4137

1 (a) The legislative rule filed in the state register  
2 on the ~~thirtieth~~ first day of August, one thousand nine  
3 hundred ~~ninety-six~~ ninety-seven, authorized under the  
4 authority of section six, article eighteen, chapter twenty-  
5 two of this code, relating to the division of environmental  
6 protection (hazardous waste management, 33 CSR 20), is  
7 authorized.

8 (b) The legislative rule filed in the state register  
9 on the twenty-ninth day of August, one thousand nine  
10 hundred ninety-six, authorized under the authority of  
11 section four, article five, chapter twenty-two of this  
12 code, relating to the division of environmental protection  
13 (standards of performance for new stationary sources  
14 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

15 (c) The legislative rule filed in the state register  
16 on the twenty-ninth day of August, one thousand nine  
17 hundred ninety-six, authorized under the authority of  
18 section four, article five, chapter twenty-two of this  
19 code, relating to the division of environmental protection  
20 (emission standards for hazardous air pollutants pursuant  
21 to 40 CFR Part 63, 45 CSR 34), is authorized.

22 (d) The legislative rule filed in the state register  
23 on the twenty-eighth day of August, one thousand nine

1 hundred ninety-six, authorized under the authority of  
2 section six, article seventeen, chapter twenty-two of this  
3 code, modified by the division of environmental protection  
4 to meet the objections of the legislative rule-making  
5 review committee and refiled in the state register on the  
6 twenty-second day of October, one thousand nine hundred  
7 ninety-six, relating to the division of environmental  
8 protection (underground storage tank insurance trust fund,  
9 33 CSR 32), is authorized.

10 (e) The legislative rule filed in the state register  
11 on the twenty-ninth day of August, one thousand nine  
12 hundred ninety-six, authorized under the authority of  
13 section three, article one, chapter twenty-two of this  
14 code, modified by the division of environmental protection  
15 to meet the objections of the legislative rule-making  
16 review committee and refiled in the state register on the  
17 twentieth day of December, one thousand nine hundred  
18 ninety-six, relating to the division of environmental  
19 protection (WV/NPDES regulations for coal mining  
20 facilities, 47 CSR 30), is authorized.

21 (f) The legislative rule filed in the state register  
22 on the thirtieth day of August, one thousand nine hundred  
23 ninety-six, authorized under the authority of section four,

1 article three, chapter twenty-two of this code, modified by  
2 the division of environmental protection to meet the  
3 objections of the legislative rule-making review committee  
4 and refiled in the state register on the twenty-first day  
5 of February, one thousand nine hundred ninety-seven,  
6 relating to the division of environmental protection  
7 (surface mining and reclamation regulations, 38 CSR 2), is  
8 authorized, with the following amendments:

9 "On page three, subsection 2.4, by striking out the  
10 words "Coal seams commonly associated with such minerals  
11 may include, but are not limited to Waynesburg, Washington,  
12 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk  
13 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and  
14 Stockton Lewiston";

15 On page three, subsection 2.4, line eight, by striking  
16 out the words "these seams are", and inserting in lieu  
17 thereof the words "the seam is";

18 On page nine, subsection 2.43, line two, after the  
19 word "highwall", by inserting the words "except in  
20 operations where the entire upper horizon above the lowest  
21 coal seam is proposed to be partly or entirely removed";

22 On page sixteen, subsection 2.95, line seven after  
23 the "any", by inserting the word "substantial";

1        On page eighteen, subsection 2.108, line two, after  
2 the word "stream." by adding the following:    Examples  
3 include wildlife ponds, settling basins and all ponds and  
4 facilities or structures used for water treatment.;

5        On page nineteen, subsection 2.120, line three, by  
6 striking the word "or" and inserting in lieu thereof the  
7 word "and";

8        On page twenty-nine, subsection 3.2.e., after the word  
9 "period" by striking the remainder of the subdivision  
10 3.2.e.;

11       On page forty-nine, subsection 3.14.b.7., by striking  
12 the entire paragraph;

13       On page forty-nine, subsection 3.14.b.8., by striking  
14 the entire paragraph;

15       On page forty-nine, by renumbering the remaining  
16 paragraphs;

17       On page fifty-one, subparagraph 3.14.b.14E, line one,  
18 before the word "A", by inserting the words "If requested  
19 by the Director";

20       On page fifty-one, subsection 3.14.b.15.B., by  
21 striking the entire subparagraph, and inserting in lieu  
22 thereof the following: 3.14.b.15.B. Surface water must be  
23 diverted around or over the material by properly designed

1 and stabilized diversion channels which have been designed  
2 using the best current technology to provide protection to  
3 the environment or the health, welfare and safety of the  
4 public. The channel shall be designed and constructed to  
5 ensure stability of the remaining material, control  
6 erosion, and minimize water infiltration into the remaining  
7 material.;

8 On page seventy-two, subdivision 3.29.a, line five  
9 after the word "IBR", by inserting the words "or where it  
10 has been demonstrated to the satisfaction of the Director  
11 that limited coal removal on areas immediately adjacent to  
12 the existing permit is the only practical alternative to  
13 recovery of unanticipated reserves or necessary to enhance  
14 reclamation efforts or environmental protection";

15 On page eighty-six, by inserting a new subsection 3.35  
16 to read as follows: 3.35. All grade measurements and  
17 linear measurements in this rule shall be subject to a  
18 tolerance of two percent (2%). All angles in this rule  
19 shall be measured from the horizontal and shall be subject  
20 to a tolerance of five percent (5%): *Provided, however,*  
21 *this allowable deviation from the approved plan does not*  
22 *affect storage capacity and/or performance standards.*

23 On page one hundred eight, subdivision 5.5.c., line

1 two, after the word "landowner", by striking the remainder  
2 of the paragraph and inserting in lieu thereof the words  
3 "requesting the permanent structures be left for  
4 recreational or wildlife propagation purposes or for any  
5 beneficial uses to the landowner";

6 On page one hundred twelve, subdivision 6.5.a., line  
7 five, after the word "Sunday." by adding the following:  
8 *Provided, however,* the Director may grant approval of a  
9 request for Sunday blasting if the operator demonstrates to  
10 the satisfaction of the Director that the blasting is  
11 necessary and there has been an opportunity for a public  
12 hearing.;

13 On page one hundred twenty-six, paragraph 9.2.i.2,  
14 after the word "achieved" by inserting: An alternate  
15 maximum or minimum soil pH may be approved based on the  
16 optimum pH for the revegetation species.;

17 On page one hundred thirty, line one, paragraph  
18 9.3.h.1., by striking out the paragraph in its entirety,  
19 and inserting in lieu thereof: 9.3.h.1. The minimum  
20 stocking rate of commercial tree species shall be in  
21 accordance with the approved forest management plan  
22 prepared by a registered professional forester. In no case  
23 may the rate be less than four hundred fifty (450) stems

1 per acre of commercial tree species;

2 On page one hundred thirty, paragraph 9.3.h.2., by  
3 striking out the paragraph in its entirety, and by  
4 renumbering the subsequent paragraphs;

5 On page one hundred thirty, in renumbered paragraph  
6 9.3.h.2., after the word "than", by striking out the words  
7 "four hundred fifty (450)", and inserting in lieu thereof  
8 "three hundred (300);" On page one hundred thirty, in  
9 renumbered paragraph 9.3.h.2., after the word "acre", by  
10 inserting the words "or the rate specified in the forest  
11 management plan, whichever is greater,";

12 On page two hundred twenty-two, subdivision 14.11.e,  
13 line 6, by striking out the word "operable" and by  
14 inserting in lieu thereof "such condition that operations  
15 could be resumed within sixty (60) days";

16 On page two hundred twenty-three, subdivision  
17 14.11.f., line four, by striking out the word "operative",  
18 and by inserting in lieu thereof the words "such condition  
19 that the operations could be resumed within sixty (60)  
20 days";

21 On page two hundred twenty-three, subdivision  
22 14.11.f., line four, after the word "is", by inserting the  
23 words "protected from unauthorized entry";

1 On page two hundred thirty-eight, subparagraph  
2 14.15.b.6.A., line five, after the word "exceed", by  
3 striking out the words "fifty (50) percent of the total  
4 permit acreage, or four hundred (400) acres, whichever is  
5 less, on operations which consist of at least three spreads  
6 of equipment", and inserting in lieu thereof the words  
7 "five hundred (500) acres on operations which consist of  
8 multiple spreads of equipment";

9 On page two hundred thirty-nine, subsection 14.15.c.,  
10 line three, after the word "regraded", by inserting the  
11 words "and stabilized";

12 On page two hundred thirty-nine, subsection 14.15.c.,  
13 line four, after the word "plan", by striking out the  
14 "comma" and the remainder of the subparagraph, and  
15 inserting in lieu thereof the words: The following shall  
16 not be included in the calculation of disturbed area.;

17 On page two hundred forty, paragraph 14.15.c.2., line  
18 seven, after the word "benches", by inserting the words  
19 "without regard to like thickness";

20 On page two hundred forty, paragraph 14.15.c.5, line  
21 two, after the word "graded", by inserting the words "with  
22 material placed in a stable, controlled manner which will  
23 not subsequently be moved".

1 (g) The legislative rule filed in the state register  
2 on the twenty-ninth day of August, one thousand nine  
3 hundred ninety-six, authorized under the authority of  
4 section ten, article five, chapter twenty-two of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the twenty-  
8 sixth day of November, one thousand nine hundred  
9 ninety-six, relating to the division of environmental  
10 protection (confidential information, 45 CSR 31), is  
11 authorized.

12 (h) The legislative rule filed in the state register  
13 on the twenty-ninth day of August, one thousand nine  
14 hundred ninety-six, authorized under the authority of  
15 section four, article five, chapter twenty-two of this  
16 code, modified by the division of environmental protection  
17 to meet the objections of the legislative rule-making  
18 review committee and refiled in the state register on the  
19 sixteenth day of January, one thousand nine hundred  
20 ninety-seven, relating to the division of environmental  
21 protection (to prevent and control air pollution from  
22 hazardous waste treatment, storage or disposal facilities,  
23 45 CSR 25), is authorized.

1       (i) The legislative rule filed in the state register  
2 on the fifth day of February, one thousand nine hundred  
3 ninety-seven, authorized under the authority of section  
4 three, article twenty-two, chapter twenty-two of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the twenty-  
8 fifth day of February, one thousand nine hundred  
9 ninety-seven, relating to the division of environmental  
10 protection (voluntary remediation and redevelopment, 60 CSR  
11 3), is authorized.

12       (j) That title sixty, series one of the code of state  
13 rules be amended by deleting the current interpretative  
14 rule for the office of environmental advocate and inserting  
15 in lieu thereof the following legislative rule, to read as  
16 follows:

17       "**§61-10-1. General.**

18       1.1. **Scope.** - This legislative rule governs and  
19 controls the appointment and qualifications of the position  
20 of Environmental Advocate within the Division of  
21 Environmental Protection.

22       1.2. **Authority** - West Virginia Code §22-1-3, 22-1-3a,  
23 22-20.

1        1.3. Filing Date -

2        1.4. Effective Date - July 1, 1997.

3        §61-10-2. Appointment, Salary and Qualifications.

4        2.1. Appointment. - The position of Environmental  
5 Advocate will be a full-time position, will be appointed by  
6 the Director, and will serve at the will and pleasure of  
7 the Director of the Division of Environmental Protection in  
8 accordance with the West Virginia Code §22-20-1.

9        2.2. Salary. - The salary of the position of  
10 Environmental Advocate will be set by the Director and is  
11 subject to future adjustments at the discretion of the  
12 Director.

13        2.3. Qualifications. - The Director will receive or  
14 solicit applications for the position of Environmental  
15 Advocate from persons having the following minimum  
16 qualifications:

17        2.3.a. A citizen and resident of the State of West  
18 Virginia.

19        2.3.b. A graduate from an accredited college or  
20 university with a four-year degree in a field of study  
21 directly related to the qualifications, powers, and duties  
22 of the position as set forth by the director.

1        2.3.c. A minimum of two years full-time or cumulative  
2 experience in work directly related to environmental  
3 protection, or other public service work or experience  
4 which demonstrates the ability to carry out the powers and  
5 duties of the position as set forth by the director.

6        2.3.d. A working familiarity with some of the legal  
7 requirements and programmatic functions of the Division of  
8 Environmental Protection.

9        2.3.e. A demonstrated ability to skillfully verbally  
10 and by writing communicate in a public forum.

11       2.3.f. A demonstrated ability to use word processing  
12 software for a computer and other necessary computer  
13 skills as determined by the director.

14       2.3.g. A valid West Virginia driver's license.

15 §61-10-3. Powers and Limitations -

16       The Environmental Advocate will carry out the duties  
17 of the position as set forth in this rule, and as  
18 prescribed by the Director in accordance with the  
19 following:

20       3.1. The Environmental Advocate will be guided in all  
21 actions by the policy statement and the nine purposes set  
22 forth in West Virginia Code §22-1-1 (b).

23       3.2. The Environmental Advocate may not in any

1 official capacity represent any person in, or file on  
2 behalf of any person, legal or quasi-legal actions, either  
3 in support of or opposed to the Division of Environmental  
4 Protection without the expressed approval of the Director,  
5 and under supervision of the Division of Environmental  
6 Protection's General Counsel.

7       3.3. The Environmental Advocate may not in any  
8 official capacity organize public campaigns in support of,  
9 or in opposition to official positions taken by the  
10 Division of Environmental Protection on environmental  
11 matters, and will not in any official capacity actively  
12 participate in any such organized campaign."

13       (k) The director of the division of environmental  
14 protection is hereby authorized to propose for promulgation  
15 an emergency rule to amend a current legislative rule  
16 relating to monitoring of air quality (to prevent and  
17 control particulate air pollution from manufacturing  
18 process operation, 45 CSR 7).

19       (l) The legislative rule filed in the state register  
20 on the eighteenth day of March, one thousand nine hundred  
21 ninety-seven, relating to the division of environmental  
22 protection (yard waste composting, 47 CSR 38E) is  
23 authorized.

1           NOTE: The purpose of this bill is to authorize the  
2 Division of Environmental Protection to promulgate a  
3 legislative rule relating to Hazardous Waste Management.  
4  
5           Strike-throughs indicate language that would be  
6 stricken from the present law, and underscoring indicates  
7 new language that would be added.

33-20

**Senate Bill No. 287**

(By Senator(s) Ross, Anderson, Bowman,  
Macnaughtan, Boley and Buckalew)

[Introduced January 30, 1998; referred to the  
Committee on Natural Resources; and then to the  
Committee on the Judiciary.]

10 A BILL to amend and reenact section one, article three,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of environmental  
14 protection to promulgate a legislative rule relating  
15 to hazardous waste management.

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

17 That section one, article three, chapter sixty-four of  
18 the code of West Virginia, one thousand nine hundred  
19 thirty-one, as amended, be amended and reenacted, to read  
20 as follows:

21 **ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO**

22 **PROMULGATE LEGISLATIVE RULES.**

23 **§64-3-1. Division of environmental protection.**

1 (a) The legislative rule filed in the state register  
2 on the ~~thirtieth~~ first day of August, one thousand nine  
3 hundred ~~ninety-six~~ ninety-seven, authorized under the  
4 authority of section six, article eighteen, chapter twenty-  
5 two of this code, relating to the division of environmental  
6 protection (hazardous waste management, 33 CSR 20), is  
7 authorized.

8 (b) The legislative rule filed in the state register  
9 on the twenty-ninth day of August, one thousand nine  
10 hundred ninety-six, authorized under the authority of  
11 section four, article five, chapter twenty-two of this  
12 code, relating to the division of environmental protection  
13 (standards of performance for new stationary sources  
14 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

15 (c) The legislative rule filed in the state register  
16 on the twenty-ninth day of August, one thousand nine  
17 hundred ninety-six, authorized under the authority of  
18 section four, article five, chapter twenty-two of this  
19 code, relating to the division of environmental protection  
20 (emission standards for hazardous air pollutants pursuant  
21 to 40 CFR Part 63, 45 CSR 34), is authorized.

22 (d) The legislative rule filed in the state register  
23 on the twenty-eighth day of August, one thousand nine

1 hundred ninety-six, authorized under the authority of  
2 section six, article seventeen, chapter twenty-two of this  
3 code, modified by the division of environmental protection  
4 to meet the objections of the legislative rule-making  
5 review committee and refiled in the state register on the  
6 twenty-second day of October, one thousand nine hundred  
7 ninety-six, relating to the division of environmental  
8 protection (underground storage tank insurance trust fund,  
9 33 CSR 32), is authorized.

10 (e) The legislative rule filed in the state register  
11 on the twenty-ninth day of August, one thousand nine  
12 hundred ninety-six, authorized under the authority of  
13 section three, article one, chapter twenty-two of this  
14 code, modified by the division of environmental protection  
15 to meet the objections of the legislative rule-making  
16 review committee and refiled in the state register on the  
17 twentieth day of December, one thousand nine hundred  
18 ninety-six, relating to the division of environmental  
19 protection (WV/NPDES regulations for coal mining  
20 facilities, 47 CSR 30), is authorized.

21 (f) The legislative rule filed in the state register  
22 on the thirtieth day of August, one thousand nine hundred  
23 ninety-six, authorized under the authority of section four,

1 article three, chapter twenty-two of this code, modified by  
2 the division of environmental protection to meet the  
3 objections of the legislative rule-making review committee  
4 and refiled in the state register on the twenty-first day  
5 of February, one thousand nine hundred ninety-seven,  
6 relating to the division of environmental protection  
7 (surface mining and reclamation regulations, 38 CSR 2), is  
8 authorized, with the following amendments:

9 "On page three, subsection 2.4, by striking out the  
10 words "Coal seams commonly associated with such minerals  
11 may include, but are not limited to Waynesburg, Washington,  
12 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk  
13 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and  
14 Stockton Lewiston";

15 On page three, subsection 2.4, line eight, by striking  
16 out the words "these seams are", and inserting in lieu  
17 thereof the words "the seam is";

18 On page nine, subsection 2.43, line two, after the  
19 word "highwall", by inserting the words "except in  
20 operations where the entire upper horizon above the lowest  
21 coal seam is proposed to be partly or entirely removed";

22 On page sixteen, subsection 2.95, line seven after  
23 the "any", by inserting the word "substantial";

1        On page eighteen, subsection 2.108, line two, after  
2 the word "stream." by adding the following:    Examples  
3 include wildlife ponds, settling basins and all ponds and  
4 facilities or structures used for water treatment.;

5        On page nineteen, subsection 2.120, line three, by  
6 striking the word "or" and inserting in lieu thereof the  
7 word "and";

8        On page twenty-nine, subsection 3.2.e., after the word  
9 "period" by striking the remainder of the subdivision  
10 3.2.e.;

11       On page forty-nine, subsection 3.14.b.7., by striking  
12 the entire paragraph;

13       On page forty-nine, subsection 3.14.b.8., by striking  
14 the entire paragraph;

15       On page forty-nine, by renumbering the remaining  
16 paragraphs;

17       On page fifty-one, subparagraph 3.14.b.14E, line one,  
18 before the word "A", by inserting the words "If requested  
19 by the Director";

20       On page fifty-one, subsection 3.14.b.15.B., by  
21 striking the entire subparagraph, and inserting in lieu  
22 thereof the following: 3.14.b.15.B. Surface water must be  
23 diverted around or over the material by properly designed

1 and stabilized diversion channels which have been designed  
2 using the best current technology to provide protection to  
3 the environment or the health, welfare and safety of the  
4 public. The channel shall be designed and constructed to  
5 ensure stability of the remaining material, control  
6 erosion, and minimize water infiltration into the remaining  
7 material.;

8 On page seventy-two, subdivision 3.29.a, line five  
9 after the word "IBR", by inserting the words "or where it  
10 has been demonstrated to the satisfaction of the Director  
11 that limited coal removal on areas immediately adjacent to  
12 the existing permit is the only practical alternative to  
13 recovery of unanticipated reserves or necessary to enhance  
14 reclamation efforts or environmental protection";

15 On page eighty-six, by inserting a new subsection 3.35  
16 to read as follows: 3.35. All grade measurements and  
17 linear measurements in this rule shall be subject to a  
18 tolerance of two percent (2%). All angles in this rule  
19 shall be measured from the horizontal and shall be subject  
20 to a tolerance of five percent (5%): *Provided, however,*  
21 this allowable deviation from the approved plan does not  
22 affect storage capacity and/or performance standards.

23 On page one hundred eight, subdivision 5.5.c., line

1 two, after the word "landowner", by striking the remainder  
2 of the paragraph and inserting in lieu thereof the words  
3 "requesting the permanent structures be left for  
4 recreational or wildlife propagation purposes or for any  
5 beneficial uses to the landowner";

6 On page one hundred twelve, subdivision 6.5.a., line  
7 five, after the word "Sunday." by adding the following:  
8 *Provided, however,* the Director may grant approval of a  
9 request for Sunday blasting if the operator demonstrates to  
10 the satisfaction of the Director that the blasting is  
11 necessary and there has been an opportunity for a public  
12 hearing.;

13 On page one hundred twenty-six, paragraph 9.2.i.2,  
14 after the word "achieved" by inserting: An alternate  
15 maximum or minimum soil pH may be approved based on the  
16 optimum pH for the revegetation species.;

17 On page one hundred thirty, line one, paragraph  
18 9.3.h.1., by striking out the paragraph in its entirety,  
19 and inserting in lieu thereof: 9.3.h.1. The minimum  
20 stocking rate of commercial tree species shall be in  
21 accordance with the approved forest management plan  
22 prepared by a registered professional forester, In no case  
23 may the rate be less than four hundred fifty (450) stems

1 per acre of commercial tree species;

2 On page one hundred thirty, paragraph 9.3.h.2., by  
3 striking out the paragraph in its entirety, and by  
4 renumbering the subsequent paragraphs;

5 On page one hundred thirty, in renumbered paragraph  
6 9.3.h.2., after the word "than", by striking out the words  
7 "four hundred fifty (450)", and inserting in lieu thereof  
8 "three hundred (300);" On page one hundred thirty, in  
9 renumbered paragraph 9.3.h.2., after the word "acre", by  
10 inserting the words "or the rate specified in the forest  
11 management plan, whichever is greater,";

12 On page two hundred twenty-two, subdivision 14.11.e,  
13 line 6, by striking out the word "operable" and by  
14 inserting in lieu thereof "such condition that operations  
15 could be resumed within sixty (60) days";

16 On page two hundred twenty-three, subdivision  
17 14.11.f., line four, by striking out the word "operative",  
18 and by inserting in lieu thereof the words "such condition  
19 that the operations could be resumed within sixty (60)  
20 days";

21 On page two hundred twenty-three, subdivision  
22 14.11.f., line four, after the word "is", by inserting the  
23 words "protected from unauthorized entry";

1        On page two hundred thirty-eight, subparagraph  
2 14.15.b.6.A., line five, after the word "exceed", by  
3 striking out the words "fifty (50) percent of the total  
4 permit acreage, or four hundred (400) acres, whichever is  
5 less, on operations which consist of at least three spreads  
6 of equipment", and inserting in lieu thereof the words  
7 "five hundred (500) acres on operations which consist of  
8 multiple spreads of equipment";

9        On page two hundred thirty-nine, subsection 14.15.c.,  
10 line three, after the word "regraded", by inserting the  
11 words "and stabilized";

12        On page two hundred thirty-nine, subsection 14.15.c.,  
13 line four, after the word "plan", by striking out the  
14 "comma" and the remainder of the subparagraph, and  
15 inserting in lieu thereof the words: The following shall  
16 not be included in the calculation of disturbed area.;

17        On page two hundred forty, paragraph 14.15.c.2., line  
18 seven, after the word "benches", by inserting the words  
19 "without regard to like thickness";

20        On page two hundred forty, paragraph 14.15.c.5, line  
21 two, after the word "graded", by inserting the words "with  
22 material placed in a stable, controlled manner which will  
23 not subsequently be moved".

1 (g) The legislative rule filed in the state register  
2 on the twenty-ninth day of August, one thousand nine  
3 hundred ninety-six, authorized under the authority of  
4 section ten, article five, chapter twenty-two of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the twenty-  
8 sixth day of November, one thousand nine hundred  
9 ninety-six, relating to the division of environmental  
10 protection (confidential information, 45 CSR 31), is  
11 authorized.

12 (h) The legislative rule filed in the state register  
13 on the twenty-ninth day of August, one thousand nine  
14 hundred ninety-six, authorized under the authority of  
15 section four, article five, chapter twenty-two of this  
16 code, modified by the division of environmental protection  
17 to meet the objections of the legislative rule-making  
18 review committee and refiled in the state register on the  
19 sixteenth day of January, one thousand nine hundred  
20 ninety-seven, relating to the division of environmental  
21 protection (to prevent and control air pollution from  
22 hazardous waste treatment, storage or disposal facilities,  
23 45 CSR 25), is authorized.

1           (i) The legislative rule filed in the state register  
2 on the fifth day of February, one thousand nine hundred  
3 ninety-seven, authorized under the authority of section  
4 three, article twenty-two, chapter twenty-two of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the twenty-  
8 fifth day of February, one thousand nine hundred  
9 ninety-seven, relating to the division of environmental  
10 protection (voluntary remediation and redevelopment, 60 CSR  
11 3), is authorized.

12           (j) That title sixty, series one of the code of state  
13 rules be amended by deleting the current interpretative  
14 rule for the office of environmental advocate and inserting  
15 in lieu thereof the following legislative rule, to read as  
16 follows:

17 **"§61-10-1. General.**

18           1.1. **Scope.** - This legislative rule governs and  
19 controls the appointment and qualifications of the position  
20 of Environmental Advocate within the Division of  
21 Environmental Protection.

22           1.2. **Authority** - West Virginia Code §22-1-3, 22-1-3a,  
23 22-20.

1        1.3. Filing Date -

2        1.4. Effective Date - July 1, 1997.

3 §61-10-2. Appointment, Salary and Qualifications.

4        2.1. Appointment. - The position of Environmental  
5 Advocate will be a full-time position, will be appointed by  
6 the Director, and will serve at the will and pleasure of  
7 the Director of the Division of Environmental Protection in  
8 accordance with the West Virginia Code §22-20-1.

9        2.2. Salary. - The salary of the position of  
10 Environmental Advocate will be set by the Director and is  
11 subject to future adjustments at the discretion of the  
12 Director.

13        2.3. Qualifications. - The Director will receive or  
14 solicit applications for the position of Environmental  
15 Advocate from persons having the following minimum  
16 qualifications:

17        2.3.a. A citizen and resident of the State of West  
18 Virginia.

19        2.3.b. A graduate from an accredited college or  
20 university with a four-year degree in a field of study  
21 directly related to the qualifications, powers, and duties  
22 of the position as set forth by the director.

1       **2.3.c.** A minimum of two years full-time or cumulative  
2 experience in work directly related to environmental  
3 protection, or other public service work or experience  
4 which demonstrates the ability to carry out the powers and  
5 duties of the position as set forth by the director.

6       **2.3.d.** A working familiarity with some of the legal  
7 requirements and programmatic functions of the Division of  
8 Environmental Protection.

9       **2.3.e.** A demonstrated ability to skillfully verbally  
10 and by writing communicate in a public forum.

11       **2.3.f.** A demonstrated ability to use word processing  
12 software for a computer and other necessary computer  
13 skills as determined by the director.

14       **2.3.g.** A valid West Virginia driver's license.

15 **§61-10-3. Powers and Limitations -**

16       The Environmental Advocate will carry out the duties  
17 of the position as set forth in this rule, and as  
18 prescribed by the Director in accordance with the  
19 following:

20       **3.1.** The Environmental Advocate will be guided in all  
21 actions by the policy statement and the nine purposes set  
22 forth in West Virginia Code §22-1-1 (b).

23       **3.2.** The Environmental Advocate may not in any

1 official capacity represent any person in, or file on  
2 behalf of any person, legal or quasi-legal actions, either  
3 in support of or opposed to the Division of Environmental  
4 Protection without the expressed approval of the Director,  
5 and under supervision of the Division of Environmental  
6 Protection's General Counsel.

7 3.3. The Environmental Advocate may not in any  
8 official capacity organize public campaigns in support of,  
9 or in opposition to official positions taken by the  
10 Division of Environmental Protection on environmental  
11 matters, and will not in any official capacity actively  
12 participate in any such organized campaign."

13 (k) The director of the division of environmental  
14 protection is hereby authorized to propose for promulgation  
15 an emergency rule to amend a current legislative rule  
16 relating to monitoring of air quality (to prevent and  
17 control particulate air pollution from manufacturing  
18 process operation, 45 CSR 7).

19 (l) The legislative rule filed in the state register  
20 on the eighteenth day of March, one thousand nine hundred  
21 ninety-seven, relating to the division of environmental  
22 protection (yard waste composting, 47 CSR 38E) is  
23 authorized.

1           NOTE: The purpose of this bill is to authorize the  
2 Division of Environmental Protection to promulgate a  
3 legislative rule relating to Hazardous Waste Management.

4  
5           Strike-throughs indicate language that would be  
6 stricken from the present law, and underscoring indicates  
7 new language that would be added.