

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

Form #3

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

Division of Environmental Protection  
AGENCY: Waste Management TITLE NUMBER: 33\*\*

CITE AUTHORITY W.Va. Code §22-18-6

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 20 \*\*

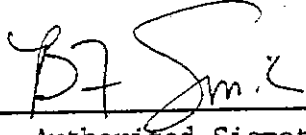
TITLE OF RULE BEING AMENDED: Hazardous Waste Management

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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

\*\*RULE WAS PREVIOUSLY FILED AS 47CSR35, BUT WAS CHANGED AS PART OF CLEANUP PROCESS

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



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

GASTON CAPERTON  
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.  
COMMISSIONER

August 28, 1996

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

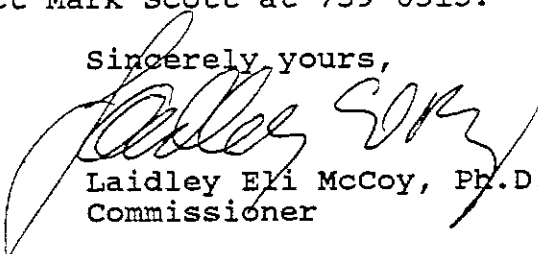
RE: 33CSR20 - "Hazardous Waste Management"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office the above-referenced rule as an Agency-Approved Rule and submission to the Legislative Rule-Making Review Committee.

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

Sincerely yours,

  
Laidley Eli McCoy, Ph.D.  
Commissioner

LEM:cc

Attachment

DATE: August 29, 1996

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

LEGISLATIVE RULE TITLE: \_\_\_\_\_ Title 33, Series 20

1. Authorizing statute(s) citation W.Va. Code §22-18-6  
\_\_\_\_\_
2. a. Date filed in State Register with Notice of Hearing  
July 10, 1996  
b. What other notice, including advertising, did you give of the hearing?  
State wide news release  
\_\_\_\_\_  
\_\_\_\_\_  
c. Date of Hearing(s) August 13, 1996  
\_\_\_\_\_
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached  No comments received \_\_\_\_\_
- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:  
(be exact)  
August 30, 1996  
\_\_\_\_\_
- f. Name and phone number(s) of agency person(s) to contact for additional information:  
H. Michael Dorsey, Assistant Chief  
\_\_\_\_\_  
Compliance Monitoring and Enforcement  
\_\_\_\_\_  
Office of Waste Management  
1356 Hansford Street  
Charleston, WV 25301-1401  
Telephone: (304) 558-5989

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

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

N/A

b. Date of hearing:

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

N/A

d. Attach findings and determinations and reasons:

Attached

**BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

**Title: 33, Series 20**

**A. AUTHORITY: WV Code §22-18-6**

**B. SUMMARY OF RULE:** The proposed amendment to this rule is being submitted for a technical cleanup only. The proposed amendment to this rule is not a result of new federal requirements, therefore, no substantive changes are proposed.

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

The proposed amendment to this rule clarifies the current rule and satisfies federal requirements of consistency and equivalent stringency to allow authorization of the federal program to the state and ensure that significant federal funds are allotted to the West Virginia program each year. The amendment will correct typographical errors, incorrect references and incorporate a small number of grammatical enhancements.

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

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

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

This proposed amendment is being submitted for a technical cleanup only. It is not being filed as a result of new federal requirements. No substantive changes are proposed.

**E. CONSTITUTIONAL TAKING DETERMINATION:**

In accordance with W.Va. Code §22-1-A, the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

At their July 17 meeting, the Environmental Protection Advisory Council had no comments on this rule. (See attached minutes of the July 17 Council meeting.)

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 33, Series 20: Hazardous Waste Management

Type of Rule:  Legislative     Interpretive     Procedural

Agency: WV Division of Environmental Protection  
Water Resources- Solid Waste Management

Address: 1356 Hansford Street  
Charleston, WV 25301

Contact Person: H. Michael Dorsey, 558-5989

**1. Effect of Proposed Rule**

|                             | ANNUAL FISCAL YEAR |          |         |      |                 |
|-----------------------------|--------------------|----------|---------|------|-----------------|
|                             | INCREASE           | DECREASE | CURRENT | NEXT | TWO YEARS AFTER |
| <u>ESTIMATED TOTAL COST</u> | \$ 0               | \$ 0     | \$ 0    | \$ 0 | \$ 0            |
| PERSONAL SERVICES           |                    |          |         |      |                 |
| CURRENT EXPENSE             |                    |          |         |      |                 |
| REPAIRS & ALTERNATIONS      |                    |          |         |      |                 |
| EQUIPMENT                   |                    |          |         |      |                 |
| OTHER                       |                    |          |         |      |                 |

2. **Explanation of above estimates:**  
This proposed rule was submitted for technical cleanup only. This rule is not being filed as a result of new federal requirements. No substantive changes are proposed, therefore, no new administrative expenditures are anticipated.
3. **Objectives of these rules:**  
To maintain consistency and stay in compliance with federal guidelines in implementing the State program. This rule proposes technical cleanup changes that will aid the State program in maintaining its authorization status and, in turn, the continued receipt of federal funds.

Rule Title: Series 20 Hazardous Waste Management

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.  
n/a

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.  
n/a

C. Economic Impact on Citizens/Public at Large.  
n/a

Date: 7-10-96

Signature of Agency Head or Authorized Representative

B.F. Smith

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

TITLE 47 ~~33~~  
LEGISLATIVE RULES  
DIVISION OF ENVIRONMENTAL PROTECTION  
~~WATER RESOURCES~~ ~~WASTE MANAGEMENT~~  
OFFICE OF WASTE MANAGEMENT

SERIES 35 20  
HAZARDOUS WASTE MANAGEMENT RULE

§ ~~47-35-1.~~ 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.** --

1.4. **Effective Date.** --

1.5. **Amendment of Former Rule.** -- This rule amends the Hazardous Waste Management Regulations rule, ~~47 CSR 35 33~~ CSR 20, in effect prior to the date this rule becomes effective.

1.6. **Incorporation by Reference.** -- Whenever either federal statutes or regulations or state statutes or rules are incorporated by reference into this rule, the reference is to that statute or regulation in effect on July 1, 1995, 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 air quality board rule, on incineration of hazardous waste, 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.

**§ ~~47-35-2~~ 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 florescent 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 these rules 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 ~~exclusion~~ 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 an 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.

~~§ 47-35-3.~~ 33-20-3. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

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

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

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

3.1.a.2. Before claiming an exemption, the owner or operator of each wastewater treatment facility receiving mixtures of wastes under 40 CFR § 261.3(a)(2)(iv) shall notify the chief of the receipt of such wastes on a form prescribed by the chief.

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

3.2. The provisions of 40 CFR § 261.5 (f)(3)(iv) and (g)(3)(iv) are excepted from incorporation by reference. Small quantity generators and conditionally exempt small quantity generators that are in compliance with Appendix 1 of this rule are deemed in compliance with 40 CFR § 261.5 and other requirements of this rule applicable to small quantity and conditionally exempt small quantity generators. Conditionally exempt small quantity generators shall notify the chief of their hazardous waste activity in accordance with Section 4 of this rule.

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

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

§ ~~47-35-4.~~ 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 ~~he begins such activity~~ such activity begins, unless such activities are exempted from the requirements of ~~these rules~~ this rule.

**4.1.a.** Any person as described in subsection 4.1 of ~~these rules~~ 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 ~~these rules~~ this rule.

**4.1.b.** The purpose of section 4 of ~~these rules~~ 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 ~~these rules~~ this rule or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in subdivision 4.1.a of ~~these rules~~ 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 ~~these rules~~ 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 ~~these rules~~ 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 within ninety (90) days of the effective date of these rules or on the date of initiation of such activities, whichever is later. 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 ~~these rules~~ this rule.

4.2.f. New generators and those initiating activities subsequent to the EPA notification period referenced in subdivision 4.1.a. of ~~these rules~~ 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.

~~§ 47-35-5.~~ 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(e)~~ 262.10(f). -- The provisions of 40 CFR ~~§ 262.10(e)~~ 262.10(f) 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 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(e)~~ 262.10(f) 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.

~~§ 47-35-6.~~ 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.

~~§ 47-35-7.~~ 33-20-7. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

7.1. ~~Rules of the Air Quality Board 45 CSR 35 25, office of air quality,~~ -- The standards in Section 7 of these regulations 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 these rules this rule, ~~the rules of the air quality board, 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 ~~these rules~~ 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 part 264.12(a) 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 ~~ground-water~~ groundwater protection standards pursuant to the authority granted the board in W. Va. Code, § 22-12-4.

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

**7.5.b.1.** For the purposes of 40 CFR part 264.94(a)(1), the groundwater protection standards at ~~46 CSR 7~~ 33 CSR 23 shall apply.

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

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

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

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

**7.7. Provisions Relating to Incinerators.** -- The provisions of 40 CFR §§ 264.343, 264.344, 264.345 and 264.347 relating to incinerators are excepted from incorporation by reference. Consult the regulations rules of the office of air quality board regarding emissions from incinerators.

**7.7.a.** Consult the office of air quality board regulations rule, 45 CSR 25, "Regulations "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 regulations rules of the office of air quality board regarding air emissions from incinerators.

~~§ 47-35-8-~~ 33-20-8. **INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.**

**8.1. 40 CFR 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), 265.149, and 265.150 are excepted from incorporation by reference.

8.4. 40 CFR §§ 265.345, 265.347, 265.352. -- The provisions of 40 CFR §§ 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 board 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 § 265.383 which is are excepted from incorporation by reference. Consult the rules of the office of air quality board 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 board regarding air emission standards for process vents and air emissions standards for equipment leaks.

~~§ 47-35-9.~~ 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 board regarding Subpart H of this part.

~~§ 47-35-10.~~ 33-20-10. LAND DISPOSAL RESTRICTIONS.

10.1. 40 CFR 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, 268.42(b) and 268.44 are excepted from incorporation by reference.

**10.4. Definition of Administrator in 40 CFR Part 268.40(b).**

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

**~~§ 47-35-11.~~ 33-20-11. THE HAZARDOUS WASTE PERMIT PROGRAM.**

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

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

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

**11.3. 40 CFR 270.2 Definitions.**

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

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

**11.4. Application Fees.**

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

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

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

### **11.5. Draft Permits.**

**11.5.a.** Once an application is complete, the chief shall tentatively decide whether to prepare a draft permit or to deny the application using criteria specified at 40 CFR 124.6(a) and (b).

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

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

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

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

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

**11.5.c.** A fact sheet prepared in accordance with subsection 11.6 of ~~these rules~~ this rule shall accompany the draft permit.

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

### **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 ~~these rules~~ 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 ~~these rules~~ this rule and no information which is submitted in accordance with the provisions of subdivision 11.7.c. of ~~these rules~~ 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 ~~these rules~~ 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 ~~subsection subdivision~~ subdivision 11.7.d. of these rules 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 ~~these rules~~ 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 ~~these rules~~ this rule.

11.7.h. Persons interested in obtaining information pursuant to subsection 11.7. of ~~these rules~~ this rule should submit a request in accordance with ~~Title 46, Water Resources Board, Series 8 (46 C.S.R. 8)~~ the environmental quality board rule 46 CSR 8.

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

#### 11.8. Public Participation in Permit Process.

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

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

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

11.8.b. Timing. -- Public notice of the preparation of a draft permit required under subsection 11.8. of these rules 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 ~~these rules~~ 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 ~~these rules~~ 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 ~~these rules~~ 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 ~~these rules~~ 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 ~~these rules~~ 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 ~~notice recipients~~ 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.

11.10.a. All public notices issued under subsection 11.8. of ~~these rules~~ 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 ~~these rules~~ 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 ~~these rules~~ 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 ~~these rules~~ 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 ~~these rules~~ 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 ~~these rules~~ this rule.

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

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

**11.13.a.1.** Prepare a new draft permit, appropriately modified, under subsection 11.2. of these rules.

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

**11.13.a.3.** Reopen or extend the comment period under subsection 11.11. of ~~these rules~~ 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 ~~these rules~~ 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. 40 CFR § 270.12. The provisions of 40 CFR § 270.12 are excepted from incorporation by reference. Availability of information provided under ~~these rules~~ this rule is controlled by the provisions of W. Va. Code, § 22-18-12 and subsection 11.7. of ~~these rules~~ this rule.

11.16. 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 board regarding emissions from process vents.

11.17. 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.

#### ~~§ 47-35-12.~~ 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 these rules ~~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.

§ ~~47-35-13~~. 33-20-13. **UNIVERSAL WASTE RULE.**

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

13.2 In addition to pesticides, lead acid batteries, and thermostats covered by 40 CFR part 273, mercury containing lamps, commonly known as ~~fiorescent~~ 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~~ 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~~ 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.

**~~§ 47-35-14.~~ 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.

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

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

§ ~~47-35-15~~ 33-20-15. MISCELLANEOUS PROVISIONS.

15.1. The provisions set forth in Appendix 1 are incorporated as a part of ~~these rules~~ this rule.

**TABLE 1  
PERMIT APPLICATION FEE SCHEDULE**

**STORAGE**

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

**DISPOSAL**

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

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

**TREATMENT**

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

**EMERGENCY PERMITS**

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

**TABLE 1.1**  
**PERMIT APPLICATION FEE SCHEDULE**  
**(CONTINUED)**

**MISCELLANEOUS**

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

## APPENDIX 1

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

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

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

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

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

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

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

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

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

1.4. If a small quantity generator treats (other than by elementary neutralization or other excluded methods), accumulates or stores for longer than the time frames set forth in paragraph a.5 1.5. of this Appendix or disposes of hazardous waste on site, the small quantity generator becomes subject to the expanded requirements of 40 CFR Parts 263, 264, 265, 266, 268 and 270 as well as any other applicable parts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.12.c. Whenever hazardous waste is being handled all personnel involved in the operation must have immediate access to an internal alarm or an emergency communication device, either directly or through visual or voice contact with another unless such a device is not required by part ~~a.12.A.2.~~ 1.12.a.2. of this Appendix. If there is just one employee on the premises while the facility is operating, that employee must have immediate access to a device referenced by part ~~a.12.A.2.~~ 1.12.a.2. of this Appendix.

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

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

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

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

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

1.12.e.4. Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions or releases at the facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2. The conditionally exempt small quantity generator must make a proper hazardous waste determination as specified in paragraph ~~a.2.~~ 1.2. of this Appendix. When determining the amount

of hazardous waste generated, a generator need only include those wastes that are generated on site prior to reclamation, and are not excluded under 40 CFR part 261.

2.3. The conditionally exempt small quantity generator must notify the chief of its hazardous waste generation activity. No generator shall treat, store or dispose of, transport or offer for transportation hazardous waste without having received an EPA identification number.

2.4. A conditionally exempt small quantity generator may accumulate up to 1000 kilograms of hazardous waste or 1 kilogram of acute hazardous waste on site before becoming subject to the requirements of paragraph 2.5. 1.5. of this Appendix with the exception that:

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

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

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

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

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

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

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

2.7. Hazardous waste subject to the reduced requirements of subdivision b may be mixed with non-hazardous waste and remain subject to the reduced requirements even though the resultant mixture exceeds the quantity limitations in paragraph ~~b.4.~~ 2.4. of this Appendix unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR part 261 with the following modifications:

2.7.a. If any person mixes a waste with a hazardous waste that exceeds a quantity exclusion level of paragraph ~~b.4.~~ 2.4. of this Appendix, the mixture is subject to full regulations.

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

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



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

GASTON CAPERTON  
GOVERNOR

LAIDLEY ELI McCOY, Ph.D.  
DIRECTOR

**Transcript**

**Public hearing**  
**August 13, 1996**  
**6:30 p.m.**  
**Waste management conference room**  
**1356 Hansford St.**  
**Charleston, WV 25301**

**Jessica Welsh, Facilitator**

This is a public hearing for the Division of Environmental Protection, Office of Waste Management's proposed rules for legislative consideration. Public comments will be accepted on the following proposed rules:

- 47CSR35- Hazardous Waste Management, and
- 47CSR37A- to remove the requirement that the state Board of Risk and Insurance Management administers the Underground Storage Tank insurance fund.

The public comment period ends today, August 13, 1996, at the close of this hearing. No one is present at this hearing. The record is now closed.

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

# MINUTES

## DEP ADVISORY COUNCIL

July 17, 1996

The special meeting of the DEP Advisory Council was held July 17, 1996, at DEP's headquarters in Nitro, West Virginia. The meeting was called to order at 1:00 p.m. by Chairman Eli McCoy.

### ATTENDING - Advisory Council:

|                      |                     |
|----------------------|---------------------|
| Eli McCoy (Chairman) | William Raney       |
| William Samples      | Larry Harris        |
| Rick Roberts         | Jacqueline Hallinan |

### DEP:

|              |                |
|--------------|----------------|
| Mark Scott   | Jerry Ray      |
| Dick Cooke   | Mike Dorsey    |
| Ken Ellison  | Dale Farley    |
| Britt Ludwig | Wendy Radcliff |
| Ken Politan  | Charlie Sturey |
| Ken Ward     |                |

Eli McCoy began the meeting by welcoming the Council members to the Nitro Office for a special meeting that was scheduled to discuss the proposed amendments to DEP's 1997 rules. Mark Scott said that in accordance with WV Code §22-1-3(c), which requires the Director of the Division of Environmental Protection to consult with the Advisory Council prior to proposing any new rule and that Council's recommendations will be recorded and made part of the rule package when it is filed with Legislative Rule-Making and the Secretary of State's Office the end of August.

Mark briefly reviewed the proposed rules provided to the Council. He noted that an amendment to an existing Environmental Quality Board rule was filed recently regarding water quality standards. Since this is a Board rule, and only requires the approval of the Director for filing, it is not part of the DEP rule package the Council has before them. He stated that a copy will be made available to them if they would like to review it.

### 47CSR35 - "Hazardous Waste Management Rule"

Mike Dorsey, Office of Waste Management, gave the Council a brief explanation of the Hazardous Waste Management Rule. He

explained that all the proposed amendments, excluding one sentence, were made to adopt the federal hazardous waste regulations by reference.

Bill Samples asked Mike whether someone complying with the federal rule would also be in compliance with the state requirements.

Mike replied that if you are complying with the federal rules, you are also considered in compliance with the state rule.

No specific comments on the rule were made by the Council.

#### 46CSR32 - "Underground Storage Tank Insurance Trust Fund"

Ken Ellison, Office of Waste Management, gave a brief summary of the changes that are being proposed for the Underground Storage Tank Insurance Fund. General discussion was held concerning changes in the UST rule, but no specific comments were made by the Council.

#### Proposed Brownfields Legislation

Ken Ellison also explained the proposed Brownfields Legislation.

Bill Samples asked if remediation standards are being developed.

Ken answered yes, they are in the process, but they are very preliminary at this point.

Bill Raney asked if the Brownfields rule will supersede other existing federal or state requirements.

Ken said no - all other environmental rules have to be adhered to.

Bill Samples asked about the time frame on the proposed rule package.

Ken stated that the rule-drafting committee, which is totally voluntary, has set a date of September to try to get the first draft out. The law states that the agency only has to propose the rule within a year of the effective date of the law.

Bill Samples said he believes it is important to get this in place and implemented as soon as possible.

Larry Harris asked if the rule-drafting committee seems to be working toward a consensus.

Ken stated that the Governor had requested Dr. Mary Wimmer, Professor of Biochemistry at WVU, and Dr. Paul Hill, Chief Executive Officer of the National Institute for Chemical Studies, to co-chair the rule-making committee, and he feels they are the real strength to achieving a consensus. He believes that the participants are taking this task seriously and trying very hard to reach a consensus.

Jackie Hallinan asked Ken what appears to be the most contentious issue.

Ken replied that the most contentious issues are risk assessment and risk management. There still needs to be a consensus on a range of scientific and technical parameters to use in risk assessment, and there is a different degree of certainty as to what the results will be depending on which parameters are selected. Risk management decisions have to be made within a framework that recognizes that the risk assessor may not be able to quantify the risk for many constituents. At that point, the risk management decision becomes more of a combination of analysis and deliberation of all the interested and affected parties' issues.

Since these rules are still in draft form, no specific comments were made by the Council.

#### 47CSR38 - "Solid Waste Management Rule"

Dick Cooke, Office of Waste Management, briefly described the changes proposed in the Solid Waste Management rule. To receive EPA approval, one sentence in the state code pertaining to the \$8,000 per acre cap on bonding needs to be removed.

Bill Samples asked if EPA has a limit set per acre. Dick said that EPA does not have a limit.

Bill Samples said that as far as the code change DEP is simply eliminating the \$8,000 cap without substituting and not imposing any restriction on bonding. Dick replied that is correct.

#### 38CSR2 - "Surface Mining & Reclamation Rules"

Charlie Sturey, Office of Mining & Reclamation, explained the changes in the Surface Mining and Reclamation Rule. He also stated that all changes in the rule have a corresponding code change.

The main concerns in the surface mining rule were as follows:

11.6 - Site Specific Bonding - Removal of the \$5,000 cap: Bill Raney asked the basis for removing the cap. Director McCoy stated that removal of the \$5,000 cap was at the insistence of OSM. OSM believes that the cap when set at \$5,000 would be insufficient to reclaim some areas, i.e., coal preparation areas or sites we have bonded at higher costs.

14.11 - Procedures to Obtain Inactive Status - Bill Raney said he has concerns regarding the 10-year cap on inactive status for prep plants or load-out facilities; especially for the larger facilities that maintain good security.

Eli stated that prior to 1988 there was a problem with reclamation of inactive sites, and regulations were promulgated to take care of the problem. He said it doesn't seem to be a big problem now. He also stated that inactive status can be renewed and regardless of what the agency's action may be, the decision can be appealed before the Surface Mine Board, and they can overrule any agency decision if they believe otherwise.

Eli asked Bill Raney if, from industry's point of view, he would like to see those numbers removed and propose some idea to allow the inactive status to be extended longer.

Bill Raney stated that longer is not necessarily the concern; going into active and back into inactive is, but feels this is not the time to work out the details.

Larry Harris asked if we have a list of those inactive sites. Eli said DEP does have a database list of over 200 inactive sites.

After Section 14.15 "Contemporaneous Reclamation Standards" of the surface mining rule was explained, Bill Raney stated he would like to go on record stating that this requirement in the state rule is in excess of all federal requirements.

Larry Harris asked if there is a tax or fee charged on the basis of disturbed acres. Charlie Sturey replied that the bond is not released.

A discussion was then held on Section 28 of the Code as it relates to special authorization for reclamation of existing abandoned coal on 5 acres or less if they are doing a certain type of project.

The main concern with this proposed change was the removal is limited to 5 acres. Rick Roberts asked what happens if you

have a 40-acre development site and 20 acres of coal needs to be removed. Director McCoy stated he did not realize there is a 5-acre limit in the rule. He said DEP needs to look into that and weigh the pros and cons of limiting the removal to 5 acres.

#### 47CSR30 - "WV/NPDES Regulations for Coal Mining Facilities"

Ken Politan, Office of Mining and Reclamation, explained the changes in the NPDES Regulation for Coal Mining Facilities. There was general discussion among the Council members but no specific comments concerning the changes.

#### 47CSR11A - "Wasteloads"

Jerry Ray, Office of Water Resources, gave a brief review of the proposed new wasteload rule and explained the reason for the new rule. He said the Office of Water Resources had originally planned to file it as an Interpretative rule, but after review by the Secretary of State's Office, it will be filed as a Legislative rule.

Rick Roberts expressed his concern with limiting the wasteload allocation to 12 months. He believes that with limitations on funding to construct wastewater treatment facilities, or the time it takes to obtain other permits, the time frame should be extended and asked if there is a waiver to extend the permit in certain circumstances. Jerry Ray answered no, there is no waiver.

Director McCoy stated that the problem with wasteload allocations has only existed in the last 5 years. In the past, anyone could obtain a wasteload allocation and continue to get it renewed for an undetermined amount of time. There is a potential for someone to get a wasteload allocation, never use it, and then sell their property and believe they are selling a wasteload allocation with it to get greater value from the property.

#### 38CSR10 - "Environmental Advocate"

Wendy Radcliff, DEP's Environmental Advocate, explained to the Council the circumstances behind refileing the Advocate rule. When the office was created in 1994, DEP was asked to promulgate rules setting forth the duties of the advocate office. DEP filed those rules as Interpretive rules with approval from the Secretary of State's office. A legislative performance audit of the Advocate office was conducted in April of this year. One of the recommendations was to refile the rules as legislative rules. These are identical to the interpretive rules filed in 1994.

There were no comments from the Council members.

45CSR1 - "Confidential Information"; 45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"; 45CSR34 - Emission Standards for Hazardous Air Pollutants Pursuant to 40CFR Part 63"; and 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

Dale Farley, Chief of the Office of Air Quality said that three of these rules (45CSR25, 45CSR34, and 45CSR16) are incorporating by reference federal requirements that are necessary to keep the program up to date under Title 5. He then went on to explain the federal requirements to the Advisory Council.

There were no substantive comments from the Council members on these three DEP rules.

Dale briefed the Council members on the fourth DEP rule - "Confidential Information". Compared to the other sections in DEP, Air Quality seems to deal more with confidential information than any other. He said the most significant change in the rule would allow DEP to move away from the situation of inspecting the files, identifying all the documents, and then reviewing them again to determine if the files are confidential.

Jackie Hallinan said she had read the proposed rule and believes it is a step in the right direction to hopefully improve the FOIA process when information requested is contained in files that also house confidential information.

After the discussion of the Air Quality rules, Mark Scott reminded the Council members that they could also submit written comments on any of the proposed rules until the close of the public hearing for that particular rule. He told the Council that DEP will mail them a list of the public hearings that will include the date, time, and location.

Director McCoy then adjourned the meeting at approximately 4:00 p.m.

**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
ON THE  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF WASTE MANAGEMENT  
HAZARDOUS WASTE MANAGEMENT REGULATIONS  
47 CSR 35**

**August 13, 1996**

**RECEIVED**

**AUG 13 1996**

**Division of Environmental Protection  
Office of Waste Management**

**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
ON THE  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF WASTE MANAGEMENT  
HAZARDOUS WASTE MANAGEMENT REGULATIONS  
47 CSR 35**

AUGUST 13, 1996

**I. INTRODUCTION**

The Office of Waste Management ("OWM"), Division of Environmental Protection proposed for promulgation revisions to the Hazardous Waste Management Regulations, 47 CSR 35, on July 10, 1996. The public comment period expires on August 13, 1996.

The West Virginia Manufacturers Association ("WVMA") is an organization comprised of approximately 250 member companies engaged in a wide variety of manufacturing activities throughout the state. The WVMA has regularly filed comments on the Hazardous Waste Management Rules since the inception of the program, and because WVMA members may be affected by changes in the rules, the WVMA offers the following comments and recommendations.

**II. GENERAL COMMENTS**

**A. Incorporation by Reference Date**

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

In what appears to be an agency oversight, the proposed rules are not updated to incorporate

by reference the most recent federal changes. In 47 CSR 35, § 1.6, the reference date for the incorporation of the federal regulations is July 1, 1995. Traditionally, each year the OWM has proposed to update the reference to the most recent year that the federal regulations will be published prior to the legislative session in which the rules will be considered. This rule package will be presented to the 1997 Regular Session of the Legislature upon approval by the Legislative Rule-Making Review Committee. The date of the corresponding incorporation is also consistent with the date of publication of the Code of Federal Regulations. Therefore, the reference date in 47 CSR 35, § 1.6 should be July 1, 1996.

**B. Coordination with Office of Air Quality**

The WVMA remains concerned about the Office of Air Quality ("OAQ") and the OWM coordinating regulatory jurisdiction of permit issuance and regulatory enforcement for hazardous waste treatment, storage and disposal activities. The WVMA acknowledges that the provisions of "Reg. 25," 45 CSR 25, "To Prevent and Control air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities," incorporate by reference the provisions of the OWM Hazardous Waste Management Regulations, 47 CSR 35, 45 CSR 25, § 1.5.b. However, Reg. 25 contains additional provisions that may result in conflicts between the federal regulations adopted by reference in the state Hazardous Waste Management Rule.

In particular, the WVMA is concerned with duplication of the permitting requirements. The requirements under the proposed rule are set forth in Section 11. Reg. 25 incorporates by reference the permitting requirements of the OWM rule, 47 CSR 35, § 11, as well as several sections of 40 CFR Part 270 relating to permits for hazardous waste incinerators and permits for boilers and industrial furnaces that burn hazardous wastes. Because both rules contain permit requirements, the WVMA

is concerned with filing duplicate information with two agencies for the same activity. The argument for a single regulation and a single permit could not be more compelling. The inconsistency and confusion flowing from regulation of hazardous waste activities under two different rules is prominent. The WVMA will comment on the Reg. 25 provisions, but wants to point out to the OWM that a jurisdictional dilemma and regulatory duplication persists. The WVMA stands ready to assist in exploring the consolidation of the permitting requirements and the promulgation of a single rule to address hazardous waste management.

#### **C. Incorrect References**

Several sections of the proposed rule reference the rules of the Air Quality Board, 45 CSR 25. However, the air quality rules "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities" are promulgated by the Chief of the Office of Air Quality, 45 CSR 25, and not the Air Quality Board. The WVMA suggests these references be corrected throughout the rule.

#### **D. Multiple Fees**

Last year, the Legislature approved the Hazardous Waste Management Rules with significant fee increases of up to 500%. Directly related to the duplication and jurisdictional overlap, discussed above in Section II. B., is the undesirable imposition of fees by both the OWM and the OAQ. Coupled with the fees also levied by the OAQ, the costs have risen significantly over the past years. Therefore, the WVMA supports reevaluation of the fee structures of both the OAQ and OWM rules, and urges consolidation of the fee and permit programs under the umbrella agency of the DEP.

#### **E. Expansion of Universal Wastes**

The WVMA recommends that the Universal Waste category include mercury-containing

gauges, switches and containerized apparatus destined for recycling in lieu of regulating these items as hazardous waste. Currently, 40 CFR Part 273 allows for identified hazardous wastes to be managed under a less burdensome regulatory scheme. Certain batteries, pesticides and mercury-containing thermostats were included within the definition of "universal waste" as adopted by reference in West Virginia. Subsequently, the OWM included mercury-containing lamps within the definition of "universal waste," because these wastes could not be disposed of in a municipal solid waste landfill as is the case in most states.<sup>1</sup> Even though the wastes were generated by conditionally exempt small quantity generators or small quantity generators, the OWM, citing the Solid Waste Management Regulations, has prohibited the disposal of low risk fluorescent bulbs in MSW landfills.<sup>2</sup>

First, the WVMA believes that there are two main categories of mercury-containing devices that should be distinguished. Gauges and other apparatus that are broken and being repaired, which may include transportation and removal of the mercury, are not regulated or managed as hazardous waste because the material is not being discarded. However, gauges and other mercury containing devices that are being discarded by the owner, because the items are no longer useful or broken, are often characterized as hazardous waste. Notwithstanding the classification of these materials as hazardous wastes, these items are usually recycled by removal of the mercury for future use. The mercury obtained from these gauges is often very pure and not contaminated; therefore, it is economically feasible to reuse the mercury instead of treatment and disposal. Accordingly, the WVMA submits that mercury-containing gauges and apparatus that under the current regulatory

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<sup>1</sup>The bulbs may be considered hazardous because fluorescent bulbs can fail the TCLP test for mercury.

<sup>2</sup>This is despite the fact that the liner requirements under the Solid Waste Management Act and regulations, W.Va. Code § 22-15-1 *et seq.* and 47 CSR 38, resemble hazardous waste facility liner systems instead of the less stringent liner systems required under 40 CFR Part 258 for municipal solid waste facilities.

requirements would be hazardous waste should be included as universal waste throughout the rule and, in particular, in the universal waste provisions. 47 CSR 35, § 13.

In support of including mercury-containing apparatus as universal waste, the WVMA states:

1. Mercury-containing gauges and apparatus are not exclusive to a specific industry or group of industries and are commonly generated by a wide variety of types of establishments.

Numerous businesses throughout West Virginia use mercury-containing devices because of the accuracy that is achieved by the use of mercury. Because of the wide variety of uses for mercury gauges in numerous manufacturing processes, including large chemical manufacturers as well as measuring devices used in small commercial establishments, such as automotive repair and similar small businesses, the WVMA believes that gauges and other apparatus are not exclusive to a single industry. The use of mercury containing measuring devices is widespread; it includes households, small businesses, conditionally exempt small quantity generators, government maintenance activities, and many other types of facilities.

2. Mercury-containing gauges and apparatus are generated by a large number of generators and are frequently generated in relatively small quantities by each generator.

Both small and large businesses, households and government agencies replace gauges and other measuring devices on a periodic basis, usually when the measuring device is no longer properly functioning. Disposal is routine and should remain relatively constant throughout the year.

3. Mercury-containing gauges and apparatus can be easily segregated from other wastes, labeled appropriately and transported to a location known for proper reclamation so that close stewardship of the waste is assured.

The WVMA envisions a labeling and packaging system that will ensure proper management practices.

Principally, at the location where the gauges or other apparatus are taken out of service and are

intended to be discarded, the generator will segregate the wastes and properly label the materials as "universal waste." The gauges will be containerized to prevent leakage to the environment and any leakage would have to be cleaned up immediately upon discovery. Leaking devices would be segregated and placed in a separate container for transport. Transportation would entail maintenance of the universal waste labeling and retention of bills of lading documenting that the materials were delivered to a facility authorized to reclaim the mercury. Transportation could be handled by a common carrier or by the individual generator. The WVMA believes that effective storage and transportation controls are embodied in the universal waste regulations so that the system for delivery is adequate.

4. The risk posed by the waste during accumulation and transport is relatively low compared to other hazardous wastes and specific management standards would be protective of the human health and the environment during accumulation and transport.

The WVMA believes that regulation of mercury gauges and apparatus as universal waste will be sufficient to ensure protection of human health and the environment. The risk posed would be minimal with implementation of proper management by appropriate packaging, recordkeeping, and transportation. With most gauges, the mercury is already containerized. So long as the gauges are properly packaged to prevent rupture, the risk of release to the environment and exposure to humans is minimized. For gauges and apparatus that have been ruptured, the universal waste standard of proper containerization of the gauges, or apparatus, and any leaked mercury will ensure further exposure and release to the environment is prevented. As noted above, the replacement of gauges is routine and occurs periodically throughout the year. The WVMA does not anticipate significant accumulation of mercury-containing apparatus. However, for gauges and items taken out of service

and destined for recycling, the WVMA believes that collection in containers so as to minimize breakage and leakage will be sufficient to prevent releases into the environment and exposure to humans. Segregation of mercury wastes from other hazardous wastes will encourage recycling of the mercury for future applications.

5. Regulation of the waste under the universal waste rule will increase the likelihood that the waste will be diverted from non-hazardous industrial or commercial waste streams, municipal sewer or stormwater systems to recycling, treatment or disposal in compliance with Subtitle C of RCRA and the state counterpart.

The WVMA believes that the likelihood of commingling mercury wastes with other wastes will decline if the public is aware of the recycling alternative. Segregation of mercury gauges from the regular waste stream, either hazardous or solid waste, will promote reuse and deter disposal. The beneficial result will be less release of mercury to the environment. Disposal and treatment and the incidental releases and air emissions resulting therefrom can be avoided through proper collection, transportation, reclamation and reuse of mercury. The WVMA is confident that an education program coupled with classification of regulated mercury containing devices as universal waste will divert mercury materials from the wastestream and promote reuse and recycling.

6. Regulation of the waste as a universal waste will improve implementation of and compliance with the hazardous waste regulatory program.

Because many open questions remain about the classification of mercury gauges and the dichotomy between regulated and nonregulated, the WVMA supports the notion that the classification as a universal waste will provide clear guidance for people to classify mercury gauges and apparatus for regulatory purposes. The goal of regulatory compliance is enhanced by providing certainty in the regulatory program.

7. Enhanced public awareness and recycling.

Through public awareness and education, the WVMA believes that greater recycling and less disposal will result for mercury devices. In lieu of mixing mercury devices with other wastes, categorization as a universal waste will promote diversion from the waste stream, enhance collection, deter disposal as an option, diminish the need for treatment of mercury wastes, reduce air emissions from retorting and promote reuse. These goals and projected benefits comport with the intent of the concept of universal waste. The WVMA, therefore, urges the OWM to consider including mercury containing materials, such as gauges, that are currently classified as hazardous waste as universal wastes for regulatory purposes. The WVMA supports the concept of three categories for regulating mercury contaminating devices; exempt, universal waste, and hazardous waste.

### III. CONCLUSION

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

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

Respectfully submitted this 13th day of August, 1996.

*Karen S. Price / R. L. Foster*

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**RESPONSE TO COMMENTS  
ON  
WEST VIRGINIA HAZARDOUS WASTE MANAGEMENT RULES  
TITLE 33 SERIES 20**

The Division of Environmental Protection, Office of Waste Management (OWM) received written comments from the West Virginia Manufacturer's Association (WVMA). Following are the comments submitted and the responses thereto:

**Comment:** The WVMA commented that the proposed rule is not updated to incorporate by reference the federal regulations through July 1, 1996 and suggested that OWM should do so.

**Response:** OWM has consulted with the EPA contractor who is assisting with the hazardous waste program authorization. This contractor, who is a nationally recognized expert on state authorization, has recommended against updating the incorporation by reference date to avoid the risk of jeopardizing the authorization project. She noted that the incorporation update could potentially cause incorrect references to the federal counterparts without a thorough comparison of the federal codes. Therefore, the incorporation by reference date has not been changed.

**Comment:** The WVMA pointed out that certain provisions of 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment Storage and Disposal Facilities" contains proposed provisions that may result in conflicts with federal regulations adopted by reference by OWM. WVMA is concerned that regulatory duplication and inconsistency will result.

**Response:** OWM appreciates WVMA's comment and agrees that the agency needs to avoid duplication to the greatest extent possible. We believe, however, that WVMA's issue lies with the Office of Air Quality (OAQ) Rule rather than with the Hazardous Waste Management Rule. We will be happy to meet with WVMA and other interested parties in the future to discuss this potential problem and to chart a course that will avoid unnecessary work and regulation for all parties.

**Comment:** The WVMA comments that the proposed rule references the rule of the Air Quality Board, 45 CSR 25 when the correct reference should be to the Office of Air Quality.

**Response:** OWM agrees with this comment and the changes have been made.

**Comment:** The WVMA urges that both OAQ and OWM reevaluate fee structures and consolidate fee and permit programs under the umbrella jurisdiction of the Division of Environmental Protection.

**Response:** OWM understands and appreciates WVMA's concern about the rising costs of doing business and is willing to discuss revised or restructured fee and permit programs as part of a comprehensive agency-wide initiative. At this time, however, given the mandate of Chapter 22 Article 18 Section 6 (a)(11) of the West Virginia Code [§22-18-6 (a)(11)], OWM does not intend to alter the rule in this respect.

**Comments:** The WVMA recommends that the Universal Waste category include mercury-containing gauge, switches and containerized apparatus destined for recycling in lieu of regulating these items as hazardous waste.

**Response:** OWM is intrigued and impressed by WVMA's proposal to expand the Universal Waste definition and scope. Given the fact that West Virginia's Universal Waste Rule is already more expansive than its federal counterpart and after consultation with US EPA, OWM must decline to adopt this suggestion at this time. This decision is based largely on the fear that adoption of the suggested expansion would jeopardize OWM's current effort to obtain increased authorization for its RCRA program.

***Explanation of Additional Non-Substantive Changes  
Made to Rule  
for  
Agency Approval of Proposed Rule***

As described in the following three (3) pages, this rule undertook additional non-substantive changes as a part of the West Virginia Division of Environmental Protection-wide technical corrections to the code of state rules.

***Explanation of Additional Substantive Change  
Made to Rule  
for  
Agency Approval of Proposed Rule***

Incorrect citation -- At §33-20-5.2, West Virginia excepts 40 CFR §252.10(e) from the incorporation by reference and includes an equivalent analog to 40 CFR §262.10(e) at §33-20-5.2.a and b. It is made clear that the exception does not, in any way, abrogate the enforcement authority of RCRA §3008. However, the reference to 40 CFR §262.10(e) is incorrect. The correct reference is §262.10(f) which addresses compliance requirements and penalties prescribed in RCRA §3008. This error was discovered by a U. S. EPA contractor, who is aiding the West Virginia program in authorizing the state program through July 1, 1995. This change is necessary to ensure the authorization of the state program.

47 CSR 35

DIVISION OF ENVIRONMENTAL PROTECTION

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking the title number '47' and inserting in lieu thereof the title number '33';

Beginning on page 1, in the title, and continuing throughout the text of the rule by striking the series number '35' and inserting in lieu thereof the series number '20';

On page 1, in the title, by striking the words 'WATER RESOURCES-WASTE MANAGEMENT' and inserting in lieu thereof the words 'OFFICE OF WASTE MANAGEMENT';

On page 1, subsection 1.7., by striking the words 'air quality board' and inserting in lieu thereof the words 'division of environmental protection, office of air quality';

On page 1, subsection 1.7, by striking the words 'on incineration of hazardous waste' immediately preceding the rule reference 45 CSR 25, and inserting "'To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities'" immediately following the rule reference 45 CSR 25;

Beginning on page 2, subsection 2.2. and continuing throughout the text of the rule, by striking the words 'these rules' and inserting in lieu thereof the words 'this rule';

On page 4, subsection 4.1., by striking the words 'he begins such activity' and inserting in lieu thereof the words 'such activity begins';

On page 5, subsection 5.2. and again in subdivision 5.2.b., by striking the reference '262.10(e)' and inserting in lieu thereof the reference '262.10(f)';

Beginning on page 5, subdivision 5.2.a. and continuing throughout the text of this rule, immediately following the word 'he', by inserting the words 'or she';

On page 6, subsection 7.1., by striking the words 'Rules of the Air Quality Board' and inserting in lieu thereof the words 'office of air quality';

On page 6, subsection 7.1., by striking the words 'these regulations' and inserting in lieu thereof the words 'this rule';

On page 6, subsection 7.1., by striking the words 'the rules of the air quality board' immediately preceding the reference 45 CSR 25, and inserting the words "'To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities'" immediately following the reference 45 CSR 25;

On page 6, paragraph 7.5.b.1., by striking the rule reference '46 CSR 7' and inserting in lieu thereof the rule reference '33 CSR 23';

On page 7, subsection 7.7., by striking the word 'regulations' and inserting in lieu thereof the word 'rules';

Beginning on page 7, subsection 7.7., and continuing in subsections 7.8., 8.4., 8.5., 8.6., 9.1., and 11.16. and subdivision 7.7.a., by inserting the words 'office of' immediately preceding the words 'air quality';

Beginning on page 7, subsection 7.7., and continuing in subsections 7.8., 8.4., 8.5., 8.6., 9.1. and 11.16., by striking the word 'board' immediately following the words 'air quality';

On page 7, subdivision 7.7.a., by striking the words 'board regulations' and inserting in lieu thereof the word 'rule';

On page 7, subdivision 7.7.a., by striking the word 'Regulations' immediately following the rule reference '45 CSR 25';

On page 7, subsection 7.8., by striking the word 'regulations' and inserting in lieu thereof the word 'rules';

On page 10, subdivision 11.7.e., by striking the word 'subsection' and inserting in lieu thereof the word 'subdivision';

On page 10, subdivision 11.7.h., by striking the words 'Title 46, Water Resources Board, Series 8 (46 C.S.R. 8)' and inserting in lieu thereof 'the environmental quality board rule 46 CSR 8'."

ANALYSIS OF PROPOSED LEGISLATIVE RULE JAA

**Agency:** Division of Environmental Protection- Office of Waste Management

**Subject:** Hazardous Waste Management 47CSR35

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PERTINENT DATES

Filed for public comment: July 10, 1996  
Public comment period ended: August 13, 1996  
Filed following public comment period: August 30, 1996  
Filed LRMRC: August 30, 1996  
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Brief Summary

The Office of Waste Management is proposing amending this rule to correct an incorrect federal cite and make technical changes to the rule. There are also small substantive changes in the rule.

Summary by Section

Most changes through-out the rule are cleanup. Two sections have substantive modifications.

Section 5

Subsection 5.2 corrects a incorrect federal cite contained in the current rule. The reference to CFR 262.10(f) is inserted. Section five intends to exclude 262.10(f) from incorporation into the rule. 262.10(f) refers to federal penalties which do not apply to states with enforcement primacy.

Appendix 1, Section 2 (p.36)

Conditionally exempt small quality generators currently may accumulate up to 1,000 kilograms of hazardous wastes on site. The rule is amended to allow conditionally exempt small quality generators to also accumulate up to 1 kilogram of acute hazardous

waste on site.

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AUTHORITY

Statutory authority: W.Va. Code, §22-18-6 provides...

(a) The director has overall responsibility for the promulgation of rules under this article.... [These rules} shall be consistent with but no more expansive in coverage nor more stringent in effect than the rules and regulations promulgated by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act.

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ANALYSIS

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

No.

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

Yes.

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

No.

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

Yes.

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

Yes.

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

No.

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

No. WVC §29A-3-11 requires the filing of one copy of any relevant federal statute or regulation with the legislative rule-making and review committee. There was no copy of the incorporated CFR cites provided with the rule.

VIII. OTHER.

2316

H. B. 2312

1 Bill-DEP, Haz Waste

2 (By Delegate(s) Douglas, Hunt, Compton,  
3 Faircloth, Linch and Riggs)

4  
5 [Introduced March 3, 1997; referred to the  
6 Committee on the Judiciary.]

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 protection  
14 to promulgate a legislative rule relating to hazardous  
15 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 as  
20 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 rules rule filed in the state  
2 register on twenty-eighth day of July, one thousand nine  
3 hundred ninety-five, authorized under the authority of  
4 section four, article five, chapter twenty-two of this code,  
5 relating to the division of environmental protection  
6 (emission standards for hazardous air pollutants pursuant to  
7 40 CFR Part 63, 45 CSR 34), are is authorized.

8       (b) The legislative rules rule filed in the state  
9 register on the twenty-eighth day of July, one thousand nine  
10 hundred ninety-five, authorized under the authority of  
11 section four, article five, chapter twenty-two of this code,  
12 modified by the division of environmental protection to meet  
13 the objections of the legislative rule-making review  
14 committee and refiled in the state register on the twenty-  
15 seventh day of October, one thousand nine hundred  
16 ninety-five, relating to the division of environmental  
17 protection (to prevent and control air pollution from  
18 hazardous waste treatment, storage or disposal facilities,  
19 45 CSR 25), are is authorized.

20       (c) The legislative rules rule filed in the state  
21 register on the twenty-eighth day of July, one thousand nine  
22 hundred ninety-five, authorized under the authority of  
23 section four, article five, chapter twenty-two of this code,

1 relating to the division of environmental protection (acid  
2 rain provisions and permits, 45 CSR 33), ~~are~~ is authorized.

3 (d) The legislative ~~rules~~ rule filed in the state  
4 register on the thirty-first day of July, one thousand nine  
5 hundred ninety-five, authorized under the authority of  
6 section six, article seventeen, chapter twenty-two of this  
7 code, modified by the division of environmental protection  
8 to meet the objections of the legislative rule-making review  
9 committee and refiled in the state register on the  
10 eighteenth day of January, one thousand nine hundred  
11 ninety-six, relating to the division of environmental  
12 protection (underground storage tanks, 47 CSR 36), ~~are~~ is  
13 authorized.

14 (e) The legislative ~~rules~~ rule filed in the state  
15 register on the ~~thirty-first~~ thirtieth day of ~~July~~ August,  
16 one thousand nine hundred ~~ninety-five~~ ninety-six, authorized  
17 under the authority of section six, article eighteen,  
18 chapter twenty-two of this code, ~~modified by the division of~~  
19 ~~environmental protection to meet the objections of the~~  
20 ~~legislative rule making review committee and refiled in the~~  
21 ~~state register on the eighteenth day of January, one~~  
22 ~~thousand nine hundred ninety-six,~~ relating to the division  
23 of environmental protection (hazardous waste management,

1 ~~regulations, 47 33 CSR 95 20), are is~~ authorized.

2 (f) The legislative ~~rules rule~~ filed in the state  
3 register on the thirty-first day of July, one thousand nine  
4 hundred ninety-five, authorized under the authority of  
5 section four, article three, chapter twenty-two of this  
6 code, modified by the division of environmental protection  
7 to meet the objections of the legislative rule-making review  
8 committee and refiled in the state register on the twenty-  
9 third day of January, one thousand nine hundred ninety-six,  
10 relating to the division of environmental protection  
11 (surface mining and reclamation regulations, 38 CSR 2), ~~are~~  
12 ~~is~~ authorized with the following amendments:

13 "On page 64, section 3.27, after the word 'Director' by  
14 striking out the word 'may' and inserting in lieu thereof  
15 the word 'shall';

16 On page 64, section 3.27, after the word 'completed' by  
17 striking out the remainder of the first paragraph and  
18 inserting in lieu thereof the following words:

19 'and reclamation activities are ongoing.'

20 On page 156, section 11.6(c)(6)(A) after the word  
21 'operations' by striking out the words 'within five (5)  
22 years of the date of SMA approval,';

23 On page 156, section 11.6(c)(6)(B) after the word '(95-

1 87)' by striking out the words 'within five (5) years of the  
2 date of SMA approval,';

3 On page 157, section 11.6(c)(6)(C), after the word  
4 'State' by striking out the words 'within five (5) years of  
5 the date of SMA approval,';

6 On page 163, section 11.6(d)(6)(A), after the word  
7 'applicant' by striking out the words 'within five (5) years  
8 of the date of SMA approval,';

9 On page 164, section 11.6(d)(6)(B), after the word '95-  
10 87' by striking out the words 'within five (5) years of the  
11 date of SMA approval,';

12 On page 164, section 11.6(d)(6)(C), after the word  
13 'wetlands' by striking out the words 'within five (5) years  
14 of the date of SMA approval,';

15 On page 169, section 11.6(e)(5)(A), after the word '95-  
16 87' by striking out the words 'within five (5) years of the  
17 date of SMA approval,';

18 On page 169, section 11.6(e)(5)(B), after the word  
19 'wetlands' by striking out the words 'within five (5) years  
20 of the date of SMA approval,';

21 On page 175, section 11.6(f)(5)(A), after the word '95-  
22 87', by striking out the words 'within five (5) years of the  
23 date of SMA approval,';

1 On page 175, section 11.6(f)(5)(B), after the word  
2 'enhancement' by striking out the words 'of wetlands within  
3 five (5) years of the date of SMA approval,'.

4 On page 178, section 12.2 subsection (e) by striking  
5 12.2.e in its entirety and inserting in lieu thereof the  
6 following:

7 'Notwithstanding any other provisions of this rule, no  
8 bond release or reduction will be granted if, at the time,  
9 water discharged from or affected by the operation requires  
10 chemical treatment in order to comply with applicable  
11 effluent limitations or water quality standards: *Provided,*  
12 That the Director may approve a request for Phase I but not  
13 Phase II or III, release if the applicant demonstrates to  
14 the satisfaction of the Director that either:

15 (A) The remaining bond is adequate to assure long term  
16 treatment of the drainage; or

17 (B) The operator has irrevocably committed other  
18 financial resources which are adequate to assure long term  
19 treatment of the drainage: *Provided,* That the alternate  
20 financial resources must be in acceptable form, and meet the  
21 standards set forth in Section 11 of the Act and Section 11  
22 of this rule: *Provided,* however, That the alternate  
23 financial arrangements shall provide a mechanism whereby the

1 Director can assume management of the resources and  
2 treatment work in the event that the operator defaults for  
3 any reason. And provided further, That default on a  
4 treatment obligation under this paragraph shall be  
5 considered equivalent to a bond forfeiture, and the operator  
6 will be subject to penalties and sanctions, including permit  
7 blocking, as if a bond forfeiture had occurred.

8 In order to make such demonstration as referenced  
9 above, the applicant shall address, at a minimum, the  
10 current and projected quantity and quality of drainage to be  
11 treated, the anticipated duration of treatment, the  
12 estimated capital and operating cost of the treatment  
13 facility, and the calculations which demonstrate the  
14 adequacy of the remaining bond or of the alternate financial  
15 resources.'

16 On page sixteen, section 38-2-2.106, after the words  
17 'sum of the loading' by inserting the words 'or driving';  
18 and by striking out the words 'in a constructed valley fill,  
19 backfill, dam, or refuse pile' and inserting in lieu thereof  
20 the words 'as determined by acceptable engineering  
21 practices';

22 On page twenty-eight, section 38-2-3.2(e), after the  
23 words 'limited number of minor changes' by inserting the

1 words 'that do not significantly affect the health, safety  
2 or welfare of the public and';

3 On page thirty-six, section 38-2-3.6(h)(5), after the  
4 words 'as defined in' by striking out the words 'Article 5D  
5 of Chapter 20' and inserting in lieu thereof the words  
6 'Article 14 of Chapter 22';

7 On page thirty-nine, section 38-2-3.8(c), at the end  
8 after the words 'reasonable time for compliance.', by  
9 inserting a new sentence to read as follows: 'Provided,  
10 That those structures and facilities, where it can be  
11 demonstrated that reconstruction or revision would result in  
12 greater environmental harm and the performance standards set  
13 forth in the Act and these regulations can otherwise be met,  
14 may be exempt from revision or reconstruction.';

15 On page one hundred seventy-eight, section 38-2-  
16 12.2(d), after the words 'until all coal extraction  
17 operations' by inserting the words 'for the permit or  
18 increment thereof', and after the words 'the entire  
19 disturbed area' by inserting the words 'for the permit or  
20 increment thereof';

21 On page one hundred ninety-seven, section 38-2-  
22 14.3(c)(2), after the words 'medium is the best' by  
23 inserting the word 'reasonably';

1 And,

2 On page two hundred fifteen, section 38-2-14.14(e)(4),  
3 by striking the sentence 'Runoff from areas above and  
4 adjacent to the fill shall not be allowed to flow onto the  
5 fill surface, and shall be diverted into stabilized  
6 diversion channels, designed and constructed to safely pass  
7 the peak runoff from a 100 year, 24 hour precipitation  
8 event.' and inserting in lieu thereof the sentences 'Surface  
9 water runoff from areas above and adjacent to the fill shall  
10 be diverted into properly designed and constructed  
11 stabilized diversion channels which have been designed using  
12 best current technology to safely pass the peak runoff from  
13 a 100 year, 24 hour precipitation event. The channel shall  
14 be designed and constructed to ensure stability of the fill,  
15 control erosion, and minimize water infiltration into the  
16 fill.'

17 (g) The legislative ~~rules~~ rule filed in the state  
18 register on the twenty-sixth day of July, one thousand nine  
19 hundred ninety-five, authorized under the authority of  
20 section four, article twenty-one, chapter twenty-two of this  
21 code, modified by the division of environmental protection  
22 to meet the objections of the legislative rule-making review  
23 committee and refiled in the state register on the

1 fourteenth day of December, one thousand nine hundred  
2 ninety-five, relating to the division of environmental  
3 protection (coalbed methane wells, 38 CSR 23), ~~are~~ is  
4 authorized.

5 (h) The legislative ~~rules~~ rule filed in the state  
6 register on the twenty-third day of November, one thousand  
7 nine hundred ninety-four, authorized under the authority of  
8 section eight, article eleven, chapter twenty of this code,  
9 modified by the division of environmental protection to meet  
10 the objections of the legislative rule-making review  
11 committee and refiled in the state register on the twentieth  
12 day of December, one thousand nine hundred ninety-five,  
13 relating to the division of environmental protection (waste  
14 tire management, 47 CSR 38G), ~~are~~ is authorized.

15 (i) The legislative ~~rules~~ rule filed in the state  
16 register on the twenty-second day of June, one thousand nine  
17 hundred ninety-five, authorized under the authority of  
18 section twenty, article fifteen, chapter twenty-two of this  
19 code, modified by the division of environmental protection  
20 to meet the objections of the legislative rule-making review  
21 committee and refiled in the state register on the twenty-  
22 second day of December, one thousand nine hundred  
23 ninety-five, relating to the division of environmental

1 protection (sewage sludge management, 47 CSR 38D), ~~are is~~  
2 authorized with the amendments set forth below:

3 On page seven, section 3.2.2, by striking out the words  
4 "Table 3 of this rule will automatically be repealed and  
5 replaced with Table 3A of this rule on December 31, 1997,  
6 unless this provision is modified prior to that date.";

7 And,

8 On page seven, section 3.2.2, after the word "rule." by  
9 inserting the following: The director is authorized until  
10 Dec. 31, 1999, to issue variances to this section to allow  
11 land application to soils which exceed the maximum soil  
12 concentrations of metals listed in Table 3 where soil  
13 analyses demonstrate that other soil factors, including, but  
14 not limited to, soil pH, cation exchange capacity, organic  
15 matter content, or clay content, will limit mobility and  
16 availability of the metals. No later than June 30, 1999,  
17 the director shall propose revisions to Table 3 to  
18 adequately protect soil quality, human health and the  
19 environment'.

20 And,

21 On page 20, by striking the following from Table 3:  
22 "NOTE: Table 3 of this rule will automatically be repealed  
23 and replaced with Table 3A of this rule on December 31,

1 1997, unless the provision of paragraph 3.2.2 of this rule  
2 is modified prior to that date.",

3 And,

4 On page 21, by striking out all of Table 3A.

5 (j) The legislative rules rule filed in the state  
6 register on the thirty-first day of July, one thousand nine  
7 hundred ninety-five, authorized under the authority of  
8 section four, article five, chapter twenty-two of this code,  
9 relating to the division of environmental protection (to  
10 prevent and control of air pollution from the emission of  
11 volatile organic compounds, 45 CSR 21), ~~are is~~ authorized  
12 with the following amendment:

13 "On pages 170 and 171, by striking out section 40 in  
14 its entirety and inserting in lieu thereof a new section 40,  
15 to read as follows:

16 §45-21-40. Other Facilities that Emit Volatile Organic  
17 Compound (VOC).

18 40.1. Applicability.

19 a. This section 40 applies to any facility that has  
20 aggregate maximum theoretical emissions of 90.7 megagrams  
21 (mg) (100 tons) or more of volatile organic compounds (VOCs)  
22 per calendar year in the absence of control devices;  
23 provided that this section 40 applies to any source or

1 sources within such facility other than those sources  
2 subject to regulation under sections 11. through 39. VOC  
3 emissions from sources regulated under sections 11. through  
4 39., but which fall below the applicability thresholds of  
5 these sections, and thus are not subject to the emissions  
6 control standards of these sections, shall be included in  
7 the determination of maximum theoretical emissions for a  
8 facility but shall not be subject to the requirements of  
9 this section 40. Emissions from sources listed in section  
10 40.1.d. shall not be included in the determination of  
11 maximum theoretical emissions for a facility.

12     b. The owner or operator of a coating line or  
13 operation, whose emissions are below this applicability  
14 threshold, shall comply with the certification,  
15 recordkeeping, and reporting requirements of section 40.6.a.

16     c. The owner or operator of a non-coating source, whose  
17 emissions are below this applicability threshold, shall  
18 comply with the certification, recordkeeping, and reporting  
19 requirements of section 40.6.b.

20     d. The requirements of this section 40. shall not apply  
21 to coke ovens (including by-product recovery plants), fuel  
22 combustion sources, barge loading facilities, jet engine  
23 test cells, vegetable oil processing facilities, wastewater

1 treatment facilities, iron and steel production, surface  
2 impoundments, pits; and boilers, industrial furnaces, and  
3 incinerators having a destruction efficiency of 95 percent  
4 or greater.

5 e. The requirements of this section 40. shall not apply  
6 to any facility bound by an order or permit, enforceable by  
7 the Director, which limits the facility's emissions to less  
8 than 100 tons of VOC per calendar year without the  
9 application of control devices.

10 40.2. Definitions. -- As used in this section 40., all  
11 terms not defined herein shall have the meaning given them  
12 in section 2.

13 a. 'Reasonably available control measures' (also  
14 denoted as RACM) means an emission limit or limits that  
15 reflect the application of control technology and/or  
16 abatement techniques or measures that are reasonably  
17 available, considering technological and economic  
18 feasibility. Such emission limits may be considered on a  
19 plant-wide basis to achieve emission reduction requirements  
20 in the most cost effective manner.

21 b. "Eugitive emissions" means those emissions which  
22 could not reasonably pass through a stack, chimney, vent, or  
23 other functionally equivalent opening.

1 40.3. Standards. -- The owner or operator of a  
2 facility subject to this section 40. shall:

3 a. Except as provided in section 40.3.b.,

4 1. With respect to any existing non-fugitive  
5 emission source which has maximum theoretical emissions of  
6 6 pounds per hour or more, comply with an emission control  
7 plan established on a case-by-case basis approved by the  
8 Director that meets the definition of reasonably available  
9 control measures (RACM) and achieves at least a 90 percent  
10 reduction in emissions below the total (aggregate) maximum  
11 theoretical emissions from all such non-fugitive emission  
12 sources subject to RACM requirements; and

13 2. With respect to each process unit producing a  
14 product or products, intermediate or final, in excess of  
15 1000 megagrams (Mg) (1,100 tons) per year, regardless of  
16 whether such product or products are listed in 40 CFR  
17 60.489, comply with an emission control plan for fugitive  
18 sources using the methods and criteria of section 37., or  
19 alternative methods and criteria approved by the Director.  
20 The Director may exempt a process unit from fugitive  
21 emission control requirements upon satisfactory  
22 demonstration that emissions are of minor significance.

23 b. With respect to such sources as described in

1 sections 40.3.a.1. and 40.3.a.2., comply with emission  
2 limits and measures based upon an alternative emissions  
3 reduction plan approved by the Director considering  
4 technical, economic and air quality benefit considerations  
5 that, at a minimum, maintains emission control measures  
6 incorporated as part of any federally approved maintenance  
7 plan for the county or area in which the source is located.

8 c. With respect to any source at a facility subject to  
9 this section 40. which source has maximum theoretical  
10 emissions of 6 pounds per hour or more and is constructed,  
11 modified or begins operating after the effective date of  
12 this rule, comply with a control plan developed on a case-  
13 by-case basis approved by the Director that meets the  
14 definition of reasonably available control technology  
15 (RACT) in section 2.60. for both fugitive and non-  
16 fugitive emission sources.

#### 17 40.4. Submissions and Approval of Control Plans

18 a. Within 90 days after the effective date of this  
19 rule, the owner or operator of a facility subject to this  
20 section 40. shall submit any required amendments to the  
21 case-by-case RACT control plans previously submitted to the  
22 Director, that revise such control plans to meet the  
23 definition of reasonably available control measures (RACM).

1           b. Notwithstanding the provisions of section 9.2.,  
2 the owner or operator of a facility subject to this rule  
3 solely due to this section 40., that requires a major  
4 process change and/or major capital investment to comply  
5 with RACM requirements, may petition the Director for an  
6 additional extension beyond December 31, 1996, for  
7 compliance certification, and the Director may grant such  
8 extension when warranted. Provided however, such compliance  
9 certification date shall be no later July 31, 1997.

10           c. The Director shall not approve a RACM plan or an  
11 alternative emissions reduction plan under this section 40.  
12 unless such plan includes:

13           1. A commitment to develop and submit a  
14 complete RACT plan to the Director within 180 days of a  
15 finding by the Director that a violation of the National  
16 Ambient Air Quality Standard for ozone has occurred within  
17 the county or maintenance area in which the source is  
18 located; and

19           2. A commitment to achieving full  
20 implementation of RACT within 2 years of approval of the  
21 RACT plan by the Director.

22           d. A finding by the Director that a violation of the  
23 National Ambient Air Quality Standard for ozone has occurred

1 shall be made based upon verification of a monitored ozone  
2 standard violation in the county or maintenance area in  
3 which the source is located. The three maintenance areas  
4 (the Huntington area, comprising Cabell and Wayne counties;  
5 the Charleston area, comprising Kanawha and Putnam counties;  
6 and the Parkersburg area, comprising Wood county) shall be  
7 treated separately and independently for any such  
8 finding(s).

9 e. All RACM control plans, RACT control plans, and  
10 alternative emissions reduction plans approved by the  
11 Director pursuant to this section 40, shall be embodied in  
12 a consent order or permit in accordance with 45CSR13 or  
13 45CSR30, as required. A facility owner or operator may at  
14 any time petition the Director to approve revisions to these  
15 plans. The decision concerning said petition shall be  
16 issued by the Director in accordance with 45CSR13 or  
17 45CSR30, as required, or a consent order. Any such  
18 revisions shall be subject to the public participation  
19 requirements of 45CSR13 or 45CSR30.

20 f. The owner or operator of a facility subject to  
21 this section 40, may submit for approval by the Director an  
22 emission control plan that meets the definition of  
23 reasonably available control technology (RACT) in section

1 2.60.

2 40.5. Test methods and procedures. -- The owner or  
3 operator of any source subject to this section 40. shall  
4 demonstrate compliance with section 40.3. by using the  
5 applicable test methods specified in sections 41. through 46  
6 or by other means approved by the Director. Notwithstanding  
7 the requirements of section 41.1., EPA approval for  
8 alternate test methods to demonstrate compliance shall not  
9 be required for sources which are subject solely to emission  
10 control requirements specified in section 40.3.

11 40.6. Reporting and Recordkeeping Requirements for  
12 Exempt Non-Control Technique Guideline (CTG) Sources.

13 a. An owner or operator of a coating line or  
14 operation that is exempt from the emission limitations in  
15 section 40.3, shall comply with the certification,  
16 recordkeeping, and reporting requirements in section 4.2.

17 b. An owner or operator of a non-coating source that  
18 is exempt from the emission limitations in section 40.3.  
19 shall submit, upon request by the Director, records that  
20 document that the source is exempt from these requirements.

21 1. These records shall be submitted to the  
22 Director within 30 days from the date of request.

23 2. If such records are not made available, the

1 source will be considered subject to the limits in section  
2 40.3.

3 40.7. Reporting and Recordkeeping Requirements for  
4 Subject Non-CTG Coating Sources. -- An owner or operator of  
5 a coating line or operation subject to this section 40. and  
6 complying with section 40.3. shall comply with the  
7 certification, recordkeeping, and reporting requirements in  
8 section 4.

9 40.8. Reporting and Recordkeeping Requirements for  
10 Subject Non-CTG, Non-Coating Sources.

11 a. The owner or operator of the subject VOC sources  
12 shall perform all testing and maintain the results of all  
13 tests and calculations required under sections 40.3. and  
14 40.5. To demonstrate that the subject source is in  
15 compliance.

16 b. The owner or operator of the subject VOC source  
17 shall maintain these records in a readily accessible  
18 location for a minimum of 3 years, and shall make these  
19 records available to the Director upon verbal or written  
20 request.

21 c. The owner or operator of any facility containing  
22 sources subject to this section 40. shall comply with the  
23 requirements in section 5. except that such requirements, as

1 they apply to sources solely subject to this section 40.,  
2 may be modified by the Director upon petition by the owner  
3 or operator. Any such modified requirements shall be  
4 embodied in the facility's control plan (RACM, RACT or  
5 alternative plan) and reflected in the associated consent  
6 order or permit issued pursuant to 45CSR13 or 45CSR30."

7 (k) The legislative ~~rules~~ rule filed in the state  
8 register on the twenty-seventh day of July, one thousand  
9 nine hundred ninety-five, authorized under the authority of  
10 section five, article twelve, chapter twenty-two of this  
11 code; modified by the division of environmental protection  
12 to meet the objections of the legislative rule-making review  
13 committee and refiled in the state register on the  
14 seventeenth day of January, one thousand nine hundred  
15 ninety-six, relating to the division of environmental  
16 protection (monitoring well design standards, 47CSR60), ~~are~~  
17 is authorized.

18 (l) The legislative ~~rules~~ rule filed in the state  
19 register on the thirty-first day of July, one thousand nine  
20 hundred ninety-five, authorized under the authority of  
21 section five, article fifteen, chapter twenty-two of this  
22 code, modified by the division of environmental protection  
23 to meet the objections of the legislative rule-making review

n/c

1 committee and refiled in the state register on the twenty-  
2 fourth day of January, one thousand nine hundred ninety-six,  
3 relating to the division of environmental protection (solid  
4 waste management, 47 CSR 38), ~~are~~ is authorized with the  
5 following amendments:

6 "On page 37, subdivision 3.8.4, after the words 'from  
7 the uppermost' by striking the word 'significant.'

8 On page 142, by striking the existing subdivision  
9 4.11.2.c.A and inserting in lieu thereof the following:  
10 '4.11.2.c.A

11 The monitoring frequency for all constituents listed in  
12 Appendix I of this rule, must be at least twice a year  
13 during the active life of the facility, including closure  
14 and the post-closure periods. The director may require  
15 more frequent monitoring on a site-specific basis by  
16 considering aquifer flow rate and existing quality of the  
17 groundwater.'

18 On page 148, by striking the existing subdivision  
19 4.11.3.i.A. and inserting in lieu thereof the following:

20 '4.11.3.i.A.

21 The director may consider an alternative groundwater  
22 protection standard in consultation with the environmental  
23 quality board pursuant to 47CSR57 for constituents for which

1 water quality standards have not been established.'

2 On page 151, subdivision 4.11.5., by following the  
3 words: 'any applicable groundwater quality protection  
4 standards' by inserting the words 'and/or background  
5 groundwater quality, pursuant to the requirements of the  
6 Groundwater Protection Act, WVC §22-12-1 et seq.'

7 On page 152, subdivision 4.11.6.b.A., by following the  
8 words: 'Be protective of human health and the environment'  
9 inserting the words 'and maintain existing groundwater  
10 quality, pursuant to the requirements of the Groundwater  
11 Protection Act, WVC §22-12-1 et seq.'

12 On page 154, subdivision 4.11.6.d.B.(f), by striking  
13 the words 'Resource value of the aquifer' and inserting in  
14 lieu thereof the words 'The hydrogeologic characteristics of  
15 the facility and the surrounding land,'

16 On page 154, subdivision 4.11.6.d.B(f).(e) by striking  
17 out the words "The hydrogeologic characteristics of the  
18 facility and surrounding land;

19 And, by renumbering and relettering the remaining  
20 subdivisions of the rule.

21 On page 156, subdivision 4.11.7.a.A., by following the  
22 words: 'Demonstrate compliance with' inserting the words 'the  
23 Groundwater Protection Act, WVC §22-12-1 et seq., and/or

1 the''

2 And,

3 On page 173, subdivision 5.4.3, by adding the following  
4 sentence to the end of the subdivision: 'A class D facility  
5 other than a class D-1 solid waste facility shall not exceed  
6 two (2) acres in size.'

7

8 NOTE: The purpose of this bill is to authorize the  
9 Division of Environmental Protection to promulgate a  
10 legislative rule relating to Hazardous Waste Management.

11

12 Strike-throughs indicate language that would be  
13 stricken from the present law, and underscoring indicates  
14 new language that would be added.

Senate Bill No. 165

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

3 [Introduced March 3, 1997; referred to the  
4 Committee on Natural Resources; and then to the  
5 Committee on the Judiciary.]  
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 protection  
14 to promulgate a legislative rule relating to hazardous  
15 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 as  
20 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 ~~rules~~ rule filed in the state  
2 register on twenty-eighth day of July, one thousand nine  
3 hundred ninety-five, authorized under the authority of  
4 section four, article five, chapter twenty-two of this code,  
5 relating to the division of environmental protection  
6 (emission standards for hazardous air pollutants pursuant to  
7 40 CFR Part 63, 45 CSR 34), ~~are~~ is authorized.

8           (b) The legislative ~~rules~~ rule filed in the state  
9 register on the twenty-eighth day of July, one thousand nine  
10 hundred ninety-five, authorized under the authority of  
11 section four, article five, chapter twenty-two of this code,  
12 modified by the division of environmental protection to meet  
13 the ~~objections of the legislative rule-making review~~  
14 committee and refiled in the state register on the twenty-  
15 seventh day of October, one thousand nine hundred  
16 ninety-five, relating to the division of environmental  
17 protection (to prevent and control air pollution from  
18 hazardous waste treatment, storage or disposal facilities,  
19 45 CSR 25), ~~are~~ is authorized.

20           (c) The legislative ~~rules~~ rule filed in the state  
21 register on the twenty-eighth day of July, one thousand nine  
22 hundred ninety-five, authorized under the authority of  
23 section four, article five, chapter twenty-two of this code,

1 relating to the division of environmental protection (acid  
2 rain provisions and permits, 45 CSR 33), ~~are~~ is authorized.

3 (d) The legislative ~~rules~~ rule filed in the state  
4 register on the thirty-first day of July, one thousand nine  
5 hundred ninety-five, authorized under the authority of  
6 section six, article seventeen, chapter twenty-two of this  
7 code, modified by the division of environmental protection  
8 to meet the objections of the legislative rule-making review  
9 committee and refiled in the state register on the  
10 eighteenth day of January, one thousand nine hundred  
11 ninety-six, relating to the division of environmental  
12 protection (underground storage tanks, 47 CSR 36), ~~are~~ is  
13 authorized.

14 (e) The legislative ~~rules~~ rule filed in the state  
15 register on the ~~thirty-first~~ thirtieth day of ~~July~~ August,  
16 ~~one thousand nine hundred ninety-five~~ ninety-six, authorized  
17 under the authority of section six, article eighteen,  
18 chapter twenty-two of this code, ~~modified by the division of~~  
19 ~~environmental protection to meet the objections of the~~  
20 ~~legislative rule-making review committee and refiled in the~~  
21 ~~state register on the eighteenth day of January, one~~  
22 ~~thousand nine hundred ninety-six,~~ relating to the division  
23 of environmental protection (hazardous waste management,

1 ~~regulations, 47 33 CSR 35 201~~, are is authorized.

2 (f) The legislative ~~rules~~ rule filed in the state  
3 register on the thirty-first day of July, one thousand nine  
4 hundred ninety-five, authorized under the authority of  
5 section four, article three, chapter twenty-two of this  
6 code, modified by the division of environmental protection  
7 to meet the objections of the legislative rule-making review  
8 committee and refiled in the state register on the twenty-  
9 third day of January, one thousand nine hundred ninety-six,  
10 relating to the division of environmental protection  
11 (surface mining and reclamation regulations, 38 CSR 2), ~~are~~  
12 is authorized WITH the following amendments:

13 "On page 64, section 3.27, after the word 'Director' by  
14 striking out the word 'may' and inserting in lieu thereof  
15 the word 'shall';

16 On page 64, section 3.27, after the word 'completed' by  
17 striking out the remainder of the first paragraph and  
18 inserting in lieu thereof the following words:

19 'and reclamation activities are ongoing.'

20 On page 156, section 11.6(c)(6)(A) after the word  
21 'operations' by striking out the words 'within five (5)  
22 years of the date of SMA approval,';

23 On page 156, section 11.6(c)(6)(B) after the word '(95-

1 87)' by striking out the words 'within five (5) years of the  
2 date of SMA approval,';

3 On page 157, section 11.6(c)(6)(C) after the word  
4 'State' by striking out the words 'within five (5) years of  
5 the date of SMA approval,';

6 On page 163, section 11.6(d)(6)(A), after the word  
7 'applicant' by striking out the words 'within five (5) years  
8 of the date of SMA approval,';

9 On page 164, section 11.6(d)(6)(B), after the word '95-  
10 87' by striking out the words 'within five (5) years of the  
11 date of SMA approval,';

12 On page 164, section 11.6(d)(6)(C), after the word  
13 'wetlands' by striking out the words 'within five (5) years  
14 of the date of SMA approval,';

15 On page 169, section 11.6(e)(5)(A), after the word '95-  
16 87' by striking out the words 'within five (5) years of the  
17 date of SMA approval,';

18 On page 169, section 11.6(e)(5)(B), after the word  
19 'wetlands' by striking out the words 'within five (5) years  
20 of the date of SMA approval,';

21 On page 175, section 11.6(f)(5)(A), after the word '95-  
22 87', by striking out the words 'within five (5) years of the  
23 date of SMA approval,';

1           On page 175, section 11.6(f)(5)(B), after the word  
2 'enhancement' by striking out the words 'of wetlands within  
3 five (5) years of the date of SMA approval,'.

4           On page 178, section 12.2 subsection (e) by striking  
5 12.2.e in its entirety and inserting in lieu thereof the  
6 following:

7           'Notwithstanding any other provisions of this rule, no  
8 bond release or reduction will be granted if, at the time,  
9 water discharged from or affected by the operation requires  
10 chemical treatment in order to comply with applicable  
11 effluent limitations or water quality standards: *Provided,*  
12 That the Director may approve a request for Phase I ~~EU~~ not  
13 Phase II or III, release if the applicant demonstrates to  
14 the satisfaction of the Director that either:

15           (A) The remaining bond is adequate to assure long term  
16 treatment of the drainage; or

17           (B) The operator has irrevocably committed other  
18 financial resources which are adequate to assure long term  
19 treatment of the drainage: *Provided, That the alternate*  
20 financial resources must be in acceptable form, and meet the  
21 standards set forth in Section 11 of the Act and Section 11  
22 of this rule: *Provided, however, That the alternate*  
23 financial arrangements shall provide a mechanism whereby the

1 Director can assume management of the resources and  
2 treatment work in the event that the operator defaults for  
3 any reason: *And provided further,* That default on a  
4 treatment obligation under this paragraph shall be  
5 considered equivalent to a bond forfeiture, and the operator  
6 will be subject to penalties and sanctions, including permit  
7 blocking, as if a bond forfeiture had occurred.

8 In order to make such demonstration as referenced  
9 above, the applicant shall address, at a minimum, the  
10 current and projected quantity and quality of drainage to be  
11 treated, the anticipated duration of treatment, the  
12 estimated capital and operating cost of the treatment  
13 facility, and the calculations which demonstrate the  
14 adequacy of the remaining bond or of the alternate financial  
15 resources.'

16 On page sixteen, section 38-2-2.106, after the words  
17 'sum of the loading' by inserting the words 'or driving';  
18 and by striking out the words 'in a constructed valley fill,  
19 backfill, dam, or refuse pile' and inserting in lieu thereof  
20 the words 'as determined by acceptable engineering  
21 practices';

22 On page twenty-eight, section 38-2-3.2(e), after the  
23 words 'limited number of minor changes' by inserting the

1 words 'that do not significantly affect the health, safety  
2 or welfare of the public and';

3 On page thirty-six, section 38-2-3.6(h)(5), after the  
4 words 'as defined in' by striking out the words 'Article 5D  
5 of Chapter 20' and inserting in lieu thereof the words  
6 'Article 14 of Chapter 22';

7 On page thirty-nine, section 38-2-3.8(c), at the end  
8 after the words 'reasonable time for compliance.', by  
9 inserting a new sentence to read as follows: 'Provided,  
10 That those structures and facilities, where it can be  
11 demonstrated that reconstruction or revision would result in  
12 greater environmental harm and the performance standards set  
13 forth in the Act and these regulations can otherwise be met,  
14 may be exempt from revision or reconstruction.';

15 On page one hundred seventy-eight, section 38-2-  
16 12.2(d), after the words 'until all coal extraction  
17 operations' by inserting the words 'for the permit or  
18 increment thereof', and after the words 'the entire  
19 disturbed area' by inserting the words 'for the permit or  
20 increment thereof';

21 On page one hundred ninety-seven, section 38-2-  
22 14.3(c)(2), after the words 'medium is the best' by  
23 inserting the word 'reasonably';

1       And,

2       On page two hundred fifteen, section 38-2-14.14(e)(4),  
3 by striking the sentence 'Runoff from areas above and  
4 adjacent to the fill shall not be allowed to flow onto the  
5 fill surface, and shall be diverted into stabilized  
6 diversion channels, designed and constructed to safely pass  
7 the peak runoff from a 100 year, 24 hour precipitation  
8 event.' and inserting in lieu thereof the sentences 'Surface  
9 water runoff from areas above and adjacent to the fill shall  
10 be diverted into properly designed and constructed  
11 stabilized diversion channels which have been designed using  
12 best current technology to safely pass the peak runoff from  
13 a 100 year, 24 hour precipitation event. The channel shall  
14 be designed and constructed to ensure stability of the fill,  
15 control erosion, and minimize water infiltration into the  
16 fill.'"

17       (g) The legislative ~~rules~~ rule filed in the state  
18 register on the twenty-sixth day of July, one thousand nine  
19 hundred ninety-five, authorized under the authority of  
20 section four, article twenty-one, chapter twenty-two of this  
21 code, modified by the division of environmental protection  
22 to meet the objections of the legislative rule-making review  
23 committee and refiled in the state register on the

1 fourteenth day of December, one thousand nine hundred  
2 ninety-five, relating to the division of environmental  
3 protection (coalbed methane wells, 38 CSR 23), ~~are is~~  
4 authorized.

5 (h) The legislative ~~rules~~ rule filed in the state  
6 register on the twenty-third day of November, one thousand  
7 nine hundred ninety-four, authorized under the authority of  
8 section eight, article eleven, chapter twenty of this code,  
9 modified by the division of environmental protection to meet  
10 the objections of the legislative rule-making review  
11 committee and refiled in the state register on the twentieth  
12 day of December, one thousand nine hundred ninety-five,  
13 relating to the division of environmental protection (waste  
14 tire management, 47 CSR 38G), ~~are is~~ authorized.

15 (i) The legislative ~~rules~~ rule filed in the state  
16 register on the twenty-second day of June, one thousand nine  
17 hundred ninety-five, authorized ~~under the authority~~ of  
18 section twenty, article fifteen, chapter twenty-two of this  
19 code, modified by the division of environmental protection  
20 to meet the objections of the legislative rule-making review  
21 committee and refiled in the state register on the twenty-  
22 second day of December, one thousand nine hundred  
23 ninety-five, relating to the division of environmental

1 protection (sewage sludge management, 47 CSR 38D), ~~are~~ is  
2 authorized with the amendments set forth below:

3       On page seven, section 3.2.2, by striking out the words  
4 "Table 3 of this rule will automatically be repealed and  
5 replaced with Table 3A of this rule on December 31, 1997,  
6 unless this provision is modified prior to that date.";

7       And,

8       On page seven, section 3.2.2, after the word "rule." by  
9 inserting the following: The director is authorized until  
10 Dec. 31, 1999, to issue variances to this section to allow  
11 land application to soils which exceed the maximum soil  
12 concentrations of metals listed in Table 3 where soil  
13 analyses demonstrate that other soil factors, including, but  
14 not limited to, soil pH, cation exchange capacity, organic  
15 matter content, or clay content, will limit mobility and  
16 availability of the metals. No later than June 30, 1999,  
17 the director shall propose revisions to Table 3 to  
18 adequately protect soil quality, human health and the  
19 environment',

20       And,

21       On page 20, by striking the following from Table 3:  
22 "NOTE: Table 3 of this rule will automatically be repealed  
23 and replaced with Table 3A of this rule on December 31,

1 1997, unless the provision of paragraph 3.2.2 of this rule  
2 is modified prior to that date.",

3 And,

4 On page 21, by striking out all of Table 3A.

5 (j) The legislative rules rule filed in the state  
6 register on the thirty-first day of July, one thousand nine  
7 hundred ninety-five, authorized under the authority of  
8 section four, article five, chapter twenty-two of this code,  
9 relating to the division of environmental protection (to  
10 prevent and control of air pollution from the emission of  
11 volatile organic compounds, 45 CSR 21), ~~are~~ is authorized  
12 with the following amendment:

13 "On pages 170 and 171, by striking out section 40 in  
14 its entirety and inserting in lieu thereof a new section 40,  
15 to read as follows:

16 §45-21-40. Other Facilities that Emit Volatile Organic  
17 Compound (VOC).

18 40.1. Applicability.

19 a. This section 40. applies to any facility that has  
20 aggregate maximum theoretical emissions of 90.7 megagrams  
21 (mg) (100 tons) or more of volatile organic compounds (VOCs)  
22 per calendar year in the absence of control devices;  
23 provided that this section 40. applies to any source or

1 sources within such facility other than those sources  
2 subject to regulation under sections 11. through 39. VOC  
3 emissions from sources regulated under sections 11. through  
4 39., but which fall below the applicability thresholds of  
5 these sections, and thus are not subject to the emissions  
6 control standards of these sections, shall be included in  
7 the determination of maximum theoretical emissions for a  
8 facility but shall not be subject to the requirements of  
9 this section 40. Emissions from sources listed in section  
10 40.1.d. shall not be included in the determination of  
11 maximum theoretical emissions for a facility.

12       b. The owner or operator of a coating line or  
13 operation, whose emissions are below this applicability  
14 threshold, shall comply with the certification,  
15 recordkeeping, and reporting requirements of section 40.6.a.

16       c. The owner or operator of a non-coating source, whose  
17 emissions are below this applicability threshold, shall  
18 comply with the certification, recordkeeping, and reporting  
19 requirements of section 40.6.b.

20       d. The requirements of this section 40. shall not apply  
21 to coke ovens (including by-product recovery plants), fuel  
22 combustion sources, barge loading facilities, jet engine  
23 test cells, vegetable oil processing facilities, wastewater

1 treatment facilities, iron and steel production, surface  
2 impoundments, pits; and boilers, industrial furnaces, and  
3 incinerators having a destruction efficiency of 95 percent  
4 or greater.

5 e. The requirements of this section 40. shall not apply  
6 to any facility bound by an order or permit, enforceable by  
7 the Director, which limits the facility's emissions to less  
8 than 100 tons of VOC per calendar year without the  
9 application of control devices.

10 40.2. Definitions. -- As used in this section 40., all  
11 terms not defined herein shall have the meaning given them  
12 in section 2.

13 a. 'Reasonably available control measures' (also  
14 denoted as RACM) means an emission limit or limits that  
15 reflect the application of control technology and/or  
16 abatement techniques or measures that are reasonably  
17 available, considering technological and economic  
18 feasibility. Such emission limits may be considered on a  
19 plant-wide basis to achieve emission reduction requirements  
20 in the most cost effective manner.

21 b. "Fugitive emissions" means those emissions which  
22 could not reasonably pass through a stack, chimney, vent, or  
23 other functionally equivalent opening.

1        40.3. Standards. -- The owner or operator of a  
2 facility subject to this section 40. shall:

3        a. Except as provided in section 40.3.b.,

4            1. With respect to any existing non-fugitive  
5 emission source which has maximum theoretical emissions of  
6 6 pounds per hour or more, comply with an emission control  
7 plan established on a case-by-case basis approved by the  
8 Director that meets the definition of reasonably available  
9 control measures (RACM) and achieves at least a 90 percent  
10 reduction in emissions below the total (aggregate) maximum  
11 theoretical emissions from all such non-fugitive emission  
12 sources subject to RACM requirements; and

13            2. With respect to each process unit producing a  
14 product or products, intermediate or final, in excess of  
15 1000 megagrams (Mg) (1,100 tons) per year, regardless of  
16 whether such product or products are listed in 40 CFR  
17 60.489, comply with an emission control plan for fugitive  
18 sources using the methods and criteria of section 37., or  
19 alternative methods and criteria approved by the Director.  
20 The Director may exempt a process unit from fugitive  
21 emission control requirements upon satisfactory  
22 demonstration that emissions are of minor significance.

23        b. With respect to such sources as described in

1 sections 40.3.a.1. and 40.3.a.2., comply with emission  
2 limits and measures based upon an alternative emissions  
3 reduction plan approved by the Director considering  
4 technical, economic and air quality benefit considerations  
5 that, at a minimum, maintains emission control measures  
6 incorporated as part of any federally approved maintenance  
7 plan for the county or area in which the source is located.

8 c. With respect to any source at a facility subject to  
9 this section 40., which source has maximum theoretical  
10 emissions of 6 pounds per hour or more and is constructed,  
11 modified or begins operating after the effective date of  
12 this rule, comply with a control plan developed on a case-  
13 by-case basis approved by the Director that meets the  
14 definition of reasonably available control technology  
15 (RACT) in section 2.60. for both fugitive and non-  
16 fugitive emission sources.

#### 17 40.4. Submissions and Approval of Control Plans

18 a. Within 90 days after the effective date of this  
19 rule, the owner or operator of a facility subject to this  
20 section 40. shall submit any required amendments to the  
21 case-by-case RACT control plans previously submitted to the  
22 Director, that revise such control plans to meet the  
23 definition of reasonably available control measures (RACM).

1           b. Notwithstanding the provisions of section 9.2.,  
2 the owner or operator of a facility subject to this rule  
3 solely due to this section 40., that requires a major  
4 process change and/or major capital investment to comply  
5 with RACM requirements, may petition the Director for an  
6 additional extension beyond December 31, 1996, for  
7 compliance certification, and the Director may grant such  
8 extension when warranted. Provided however, such compliance  
9 certification date shall be no later July 31, 1997.

10           c. The Director shall not approve a RACM plan or an  
11 alternative emissions reduction plan under this section 40.  
12 unless such plan includes: --

13           1. A commitment to develop and submit a  
14 complete RACT plan to the Director within 180 days of a  
15 finding by the Director that a violation of the National  
16 Ambient Air Quality Standard for ozone has occurred within  
17 the county or maintenance area in which the source is  
18 located; and

19           2. A commitment to achieving full  
20 implementation of RACT within 2 years of approval of the  
21 RACT plan by the Director.

22           d. A finding by the Director that a violation of the  
23 National Ambient Air Quality Standard for ozone has occurred

1 shall be made based upon verification of a monitored ozone  
2 standard violation in the county or maintenance area in  
3 which the source is located. The three maintenance areas  
4 (the Huntington area, comprising Cabell and Wayne counties;  
5 the Charleston area, comprising Kanawha and Putnam counties;  
6 and the Parkersburg area, comprising Wood county) shall be  
7 treated separately and independently for any such  
8 finding(s).

9 e. All RACM control plans, RACT control plans, and  
10 alternative emissions reduction plans approved by the  
11 Director pursuant to this section 40, shall be embodied in  
12 a consent order or permit in accordance with 45CSR13 or  
13 45CSR30, as required. A facility owner or operator may at  
14 any time petition the Director to approve revisions to these  
15 plans. The decision concerning said petition shall be  
16 issued by the Director in accordance with 45CSR13 or  
17 45CSR30, as required, or a consent order. Any such  
18 revisions shall be subject to the public participation  
19 requirements of 45CSR13 or 45CSR30.

20 f. The owner or operator of a facility subject to  
21 this section 40, may submit for approval by the Director an  
22 emission control plan that meets the definition of  
23 reasonably available control technology (RACT) in section

1 2.60.

2 40.5. Test methods and procedures. -- The owner or  
3 operator of any source subject to this section 40. shall  
4 demonstrate compliance with section 40.3. by using the  
5 applicable test methods specified in sections 41. through 46  
6 or by other means approved by the Director. Notwithstanding  
7 the requirements of section 41.1., EPA approval for  
8 alternate test methods to demonstrate compliance shall not  
9 be required for sources which are subject solely to emission  
10 control requirements specified in section 40.3.

11 40.6. Reporting and Recordkeeping Requirements for  
12 Exempt Non-Control Technique Guideline (CTG) Sources.

13 a. An owner or operator of a coating line or  
14 operation that is exempt from the emission limitations in  
15 section 40.3. shall comply with the certification,  
16 recordkeeping, and reporting requirements in section 4.2.

17 b. An owner or operator of a non-coating source that  
18 is exempt from the emission limitations in section 40.3.  
19 shall submit, upon request by the Director, records that  
20 document that the source is exempt from these requirements.

21 1. These records shall be submitted to the  
22 Director within 30 days from the date of request.

23 2. If such records are not made available, the

1 source will be considered subject to the limits in section  
2 40.3.

3 40.7. Reporting and Recordkeeping Requirements for  
4 Subject Non-CTG Coating Sources. --An owner or operator of  
5 a coating line or operation subject to this section 40. and  
6 complying with section 40.3. shall comply with the  
7 certification, recordkeeping, and reporting requirements in  
8 section 4.

9 40.8. Reporting and Recordkeeping Requirements for  
10 Subject Non-CTG, Non-Coating Sources.

11 a. The owner or operator of the subject VOC sources  
12 shall perform all testing and maintain the results of all  
13 tests and calculations required under sections 40.3. and  
14 40.5. to demonstrate that the subject source is in  
15 compliance.

16 b. The owner or operator of the subject VOC source  
17 shall maintain these records in a readily accessible  
18 location for a minimum of 3 years, and shall make these  
19 records available to the Director upon verbal or written  
20 request.

21 c. The owner or operator of any facility containing  
22 sources subject to this section 40. shall comply with the  
23 requirements in section 5. except that such requirements, as

1 they apply to sources solely subject to this section 40.,  
2 may be modified by the Director upon petition by the owner  
3 or operator. Any such modified requirements shall be  
4 embodied in the facility's control plan (RACM, RACT or  
5 alternative plan) and reflected in the associated consent  
6 order or permit issued pursuant to 45CSR13 or 45CSR30."

7 (k) The legislative ~~rules~~ rule filed in the state  
8 register on the twenty-seventh day of July, one thousand  
9 nine hundred ninety-five, authorized under the authority of  
10 section five, article twelve, chapter twenty-two of this  
11 code, modified by the division of environmental protection  
12 to meet the objections of the legislative rule-making review  
13 committee and refiled in the state register on the  
14 seventeenth day of January, one thousand nine hundred  
15 ninety-six, relating to the division of environmental  
16 protection (monitoring well design standards, 47CSR60), ~~are~~  
17 is authorized.

18 (l) The legislative ~~rules~~ rule filed in the state  
19 register on the thirty-first day of July, one thousand nine  
20 hundred ninety-five, authorized under the authority of  
21 section five, article fifteen, chapter twenty-two of this  
22 code, modified by the division of environmental protection  
23 to meet the objections of the legislative rule-making review

1 committee and refiled in the state register on the twenty-  
2 fourth day of January, one thousand nine hundred ninety-six,  
3 relating to the division of environmental protection (solid  
4 waste management, 47 CSR 38), ~~are~~ is authorized with the  
5 following amendments:

6 "On page 37, subdivision 3.8.4, after the words 'from  
7 the uppermost' by striking the word 'significant.'

8 On page 142, by striking the existing subdivision  
9 4.11.2.c.A and inserting in lieu thereof the following:

10 '4.11.2.c.A

11 The monitoring frequency for all constituents listed in  
12 Appendix I of this rule, must be at least twice a year  
13 during the active life of the facility, including closure  
14 and the post-closure periods. The director may require  
15 more frequent monitoring on a site-specific basis by  
16 considering aquifer flow rate and existing quality of the  
17 groundwater.'

18 On page 148, by striking the existing subdivision  
19 4.11.3.i.A. and inserting in lieu thereof the following:

20 '4.11.3.i.A.

21 The director may consider an alternative groundwater  
22 protection standard in consultation with the environmental  
23 quality board pursuant to 47CSR57 for constituents for which

1 water quality standards have not been established.'

2 On page 151, subdivision 4.11.5., by following the  
3 words 'any applicable groundwater quality protection  
4 standards' by inserting the words 'and/or background  
5 groundwater quality, pursuant to the requirements of the  
6 Groundwater Protection Act, WVC §22-12-1 et seq.'

7 On page 152, subdivision 4.11.6.b.A., by following the  
8 words 'Be protective of human health and the environment'  
9 inserting the words 'and maintain existing groundwater  
10 quality, pursuant to the requirements of the Groundwater  
11 Protection Act, WVC §22-12-1 et seq.'

12 On page 154, subdivision 4.11.6.d.B.(f), by striking  
13 the words 'Resource value of the aquifer' and inserting in  
14 lieu thereof the words 'The hydrogeologic characteristics of  
15 the facility and the surrounding land,'

16 On page 154, subdivision 4.11.6.d.B(f).(e) by striking  
17 out the words "The hydrogeologic characteristics of the  
18 facility and surrounding land;

19 And, by renumbering and relettering the remaining  
20 subdivisions of the rule.

21 On page 156, subdivision 4.11.7.a.A., by following the  
22 words 'Demonstrate compliance with' inserting the words 'the  
23 Groundwater Protection Act, WVC §22-12-1 et seq., and/or

1 the''

2 And,

3 On page 173, subdivision 5.4.3, by adding the following  
4 sentence to the end of the subdivision: 'A class D facility  
5 other than a class D-1 solid waste facility shall not exceed  
6 two (2) acres in size.'

7

8 NOTE: The purpose of this bill is to authorize the  
9 Division of Environmental Protection to promulgate a  
10 legislative rule relating to Hazardous Waste Management.

11

12 ~~Strike-throughs indicate language that would be~~  
13 ~~stricken from the present law, and underscoring indicates~~  
14 ~~new language that would be added.~~