

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #3 □

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**FILED**

2003 JUL 31 P 12:48

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: WV Department of Environmental Protection  
Division of Water and Waste Management TITLE NUMBER: 33

CITE AUTHORITY: 22-18-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 20

TITLE OF RULE BEING AMENDED: Hazardous Waste Management Rule

IF NO, SERIES NUMBER OF 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.

Stephanie R. Timmerman  
Authorized Signature

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

**Rule Title:** Hazardous Waste Management 33 CSR 20

**A. AUTHORITY:** WV Code §22-18-6

**B. SUMMARY OF RULE:**

The proposed amendment adopts and incorporates by reference federal regulations pertaining to hazardous waste management 40 CFR parts 260 through 279 effective on July 1, 2002.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

This rule is proposed to adopt changes to federal hazardous waste management regulations into the State hazardous waste management rule, enabling the State hazardous waste program to maintain consistency with the federal program.

**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 Secretary of the Department 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 Secretary shall incorporate by reference, to the greatest extent possible, the federal counterpart rule. If the Secretary determines the rule should not be the same in substance as the federal counterpart rule, then the Secretary 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 Secretary to conduct the "stringency" determination and provide specific reasons for deviation of the proposed state rule from the federal counterpart regulation.

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

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with §22-1A-1 and 3(c), the Secretary 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:**

As its June 3, 2003 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

## APPENDIX B

### FISCAL NOTE FOR PROPOSED RULES

**Rule Title:** Title 33, Series 20, Hazardous Waste Management

**Type of Rule:** XX Legislative        Interpretive        Procedural

**Agency** Department of Environmental Protection

**Address** Division of Water and Waste Management

1356 Hansford Street

Charleston, WV 25301-1401

1. Effect of Proposed Rule

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

2. **Explanation of above estimates:**

This amendment will adopt by reference federal regulations in effect as of July 1, 2000. Most changes to the rule are clarifications or technical corrections. These amendments are not projected to require additional operating expenses above the current level.

3. **Objectives of these rules:**

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

**Rule Title:** Title 33, Series 20 Hazardous Waste Management

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**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

Not anticipated to be appreciable.

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

Not anticipated to be appreciable.

**C. Economic Impact on Citizens/Public at Large.**

N/A

## 33CSR20

### HAZARDOUS WASTE MANAGEMENT RULE

#### RESPONSE TO COMMENTS

On June 11, 2003, the Division of Water and Waste Management (DWWM) commenced the public comment period and subsequently held a public hearing on July 14, 2003 to accept oral comments on the proposed rule, 33CSR20. Written comments were also accepted through 6:00 PM on Monday, July 14, 2003. No person except DWWM personnel attended the public hearing concerning proposed rule 33CSR20. USEPA submitted written comments on proposed rule 33CSR20. During the public comment period, one commenter asked about the changes to the proposed rule. DWWM addresses these comments below.

I. COMMENTER: Robert Lannan, Robinson & McKelwee

COMMENT A. *The commenter asked about the changes to the proposed rule from the previous rule.*

RESPONSE A. The current rule 33CSR20 adopts federal regulations by the method of incorporation by reference (IBR) and so adopts the federal regulations in effect on July 1, 2001. The proposed rule will use the same method and, when final, will adopt the federal regulations in effect on July 1, 2002. The Code of Federal Regulations (CFR) adopted by 33CSR20 is 40 CFR Parts 260 through 279.

In addition to the changes to 40 CFR Parts 260 through 279, the rule now specifies that the hazardous waste permit fee for renewal is the same as the permit fee for an initial permit. Also, some minor technical corrections have been made to the rule, as indicated by the strikethrough and underline markings in the body of the rule.

III. COMMENTER: U.S. Environmental Protection Agency

COMMENT A. *The commenter states that it has no comments on the proposed changes to the rule.*

RESPONSE A. No response required.

FILED

TITLE 33  
LEGISLATIVE RULES  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT

2003 JUL 31 P 12:48

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 20  
HAZARDOUS WASTE MANAGEMENT RULE

§33-20-1. SCOPE AND AUTHORITY.

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

1.2. Authority. -- This rule is promulgated pursuant to the West Virginia Hazardous Waste Management Act, W. Va. Code, §22-18-6.

1.3. Filing Date. - -

1.4. Effective Date. - -

1.5. 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, ~~2001~~ 2002, 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.

1.5.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:

1.5.a.1. "Division of Water and Waste Management, West Virginia Department of Environmental Protection" will be substituted for "Environmental Protection Agency."

1.5.a.2. "Director of the Division of Water and Waste Management, West Virginia Department of Environmental Protection"

will 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" will have the meaning defined in 40 CFR § 260.10.

1.5.a.3. Whenever the regulations require publication in the "Federal Register" compliance will 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.

1.5.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 is 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.

1.6. 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 rules 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 Department of Environmental Protection, Division of Air Quality rule, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."

1.7. 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 Department of Environmental Protection pursuant to statute, or is in excess of the statutory authority, the provision will be and remain effective only to the extent authorized by the West Virginia Code.

1.8. 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 Director, and which are in effect on the date this rule becomes effective, will continue in effect according to their terms unless modified, suspended or revoked in accordance with the law.

1.9. This rule references the provisions of West Virginia Department of Environmental Protection, Division of Air Quality rule, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities" effective on July 1, ~~2002~~ 2003.

#### §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 will 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. "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.

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

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

## 2.4. Petitions for Waste Exclusions.

2.4.a. Any person seeking to exclude a waste at a particular generating facility from 40 CFR § 261.3 or 40 CFR part 261, subpart D, as incorporated by this rule, may petition the Director for an exclusion following the procedures established in 40 CFR § 260.20 and 40 CFR § 260.22. The Department of Environmental Protection will utilize EPA guidance in evaluating delisting petitions.

2.4.b. An initial non-refundable fee of \$1,000.00 must accompany all petitions submitted under this rule. The petitioner must execute an agreement with the Director providing for the recovery of all reasonable costs incurred by the Department of Environmental Protection attributable to the review and investigation of the petition in excess of the initial fee submitted with the petition.

2.4.b.1. Recoverable costs will be determined by the number of hours worked under the agreement by the primary Department of Environmental Protection employee multiplied by 2.5 times the hourly rate of that employee and then adding direct expenses incurred by that employee. Costs related to independent contractors retained by the Department of Environmental Protection to assist in the review and investigation of petitions will be included as direct expenses.

2.4.b.2. Within thirty (30) calendar days of receiving a petition under this section, the Department of Environmental Protection will send the petitioner an itemized list of estimated costs it expects to incur as a result of reviewing and investigating the petition. The list will include anticipated outside contractor costs.

2.4.b.3. If, upon review of the itemized list of estimated costs submitted by the Department of Environmental Protection, the petitioner determines not to continue the petition process, the petitioner, if he wishes to withdraw the petition, must submit a certified letter to the Director withdrawing the petition. If the letter is submitted within ten (10) days of the date of receipt of the Department of Environmental Protection's list of estimated costs, the

petitioner will not be liable for any costs incurred in excess of the initial application fee.

2.4.c. Where the Administrator of the EPA has granted a petition to exclude hazardous waste from 40 CFR § 261.3 or 40 CFR part 261, subpart D, pursuant to 40 CFR § 260.22, the Director will accept the determination and amend this rule accordingly, provided:

2.4.c.1. Petitioner submits a copy of the petition submitted to the Administrator, including all demonstrative information and a copy of the Administrator's approval granting the exclusion pursuant to 40 CFR § 260.20(e); and

2.4.c.2. No scientifically supportable reasons for denying the petition 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 must petition the Director for an inclusion after having received approval from the Administrator of the Environmental Protection Agency. The petition will 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 petition under 40 CFR § 260.23 and 40 CFR § 260.20 and 40 CFR part 273; and

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

2.5.b. Within one hundred and twenty (120) days of the filing of the petition the Director will decide whether to approve or to deny the petition and so advise the petitioner. Where a decision to deny a petition is made, the Director will

notify the petitioner of the action in writing, setting forth the reasons therefor.

2.5.c. The Director will not deny a petition to include a waste as a universal waste that has been approved by the Administrator unless scientifically supportable reasons for the denial are advanced which had not been presented to the Administrator.

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

2.5.d.1. Submit a petition to the Director demonstrating that 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 must 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 Director 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 ~~hazardous waste program~~.

2.5.d.3. The decision of the Director will be in writing and state the reasons to either grant or deny the petition. Any petitioner aggrieved by the decision of the Director may appeal the decision to the Environmental Quality Board in accordance with the provisions of W.Va. Code § 22-18-20.

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

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

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

3.1.a.1. Provide a certification in writing to the Director that groundwater monitoring complying with either 40 CFR part 265, subpart F or which is approved by the Director, 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 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) must notify the Director of the receipt of the wastes on a form prescribed by the Director.

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

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

#### §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 must notify the Director of these activities when that activity begins, unless those activities are exempted from the requirements of this rule.

4.1.a. Any person as described in subsection 4.1 of this rule that has notified the EPA or is subject to the requirements to notify EPA as specified in volume 45, number 39 of the Federal

Register, dated February 26, 1980, pages 12746 through 12754, is subject to the provision of section 4 of this rule.

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

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

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 this rule, but is subject to those requirements must notify the Director in writing of his hazardous waste activities within thirty (30) days of the effective date of this rule. Notification may be accomplished by the use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

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

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

4.2.d. A notification form is required for each storage, treatment, disposal, or other facility. However, if one facility site includes more than one storage, treatment, or disposal activity, only one notification form for the entire facility site is required.

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

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

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

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

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

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

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

5.3. 40 CFR § 262.10(j). -- The provisions of 40 CFR § 262.10(j) (1) and (2) including Table 1 will be excepted from incorporation.

5.4. 40 CFR Part 262, Subpart E. -- The provisions of 40 CFR part 262, subpart E -- Exports of Hazardous Waste are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.5.a of this rule does not apply to the

provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of subpart E must file with the Director copies of all documentation, manifests, exception reports, annual reports or records, submitted to EPA, the Administrator or the Regional Administrator as required by and within the time frames set forth in subpart E.

5.5. 40 CFR Part 262, Subpart H. -- The provisions of 40 CFR part 262, subpart H -- Transfrontier Shipments of Hazardous Waste for Recovery within the OECD are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.6.a. of this rule does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of subpart H must file with the Director copies of all documentation, manifests, exception reports, annual reports or records, submitted to EPA, the Administrator or the Regional Administrator as required by and within the time frames set forth in subpart H.

5.6. 40 CFR Part 262, Subpart I. -- The provisions of 40 CFR part 262, subpart I -- New York State Public Utilities will be excepted from incorporation.

5.7. 40 CFR Part 262, Subpart J. -- The provisions of 40 CFR part 262, subpart J -- University Laboratories XL Project -- Laboratory Environmental Management Standard will be excepted from incorporation.

#### §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 those regulations relate to the transportation of hazardous waste by air and water.

6.2. The use of railroads for the transportation of hazardous waste is regulated by the West Virginia Public Service Commission rules, "Rules and Regulations Governing the Transportation of Hazardous Waste by Rail", 150 CSR 11. The use of the state

highways for the transportation of hazardous waste is regulated under the West Virginia Division of Highways, "Transportation of Hazardous Wastes Upon the Roads and Highways", 157 CSR 7.

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

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

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

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

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

7.3. Required Receipt of Identical Notification. -- The provisions of 40 CFR §§ 264.12(a)(1) and (2) are retained by the Environmental Protection Agency; however, the Director of the Division of Waste Management must receive identical notification.

7.4. 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.

7.4.a. For purposes of 40 CFR § 264.92, reference to the "Regional Administrator" will be to the "Environmental Quality Board." The Environmental Quality Board establishes groundwater protection standards pursuant to the authority granted the board in W. Va. Code, §22-12-4.

7.4.b. For purposes of 40 CFR § 264.94 and subparagraphs thereof, the Environmental Quality Board rule on groundwater protection standards, 46 CSR 12 will apply as required pursuant to the authority granted the Environmental Quality Board in W. Va. Code, §22-12-4.

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

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

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

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

7.6. Provisions Relating to Incinerators. -- The provisions of 40 CFR §§ 264.341, 264.342, 264.343, 264.344, 264.345 and 264.347(a) relating to incinerators are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from incinerators. The Division of Air Quality retains its authority to enforce the air monitoring items listed in 40 CFR §264.347(a) related to incinerating hazardous waste. The Division of Water and Waste Management retains its authority to enforce 40 CFR §§ 264.347(b) (c) (d).

7.6.a. Consult the Division of Air Quality, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."

7.7. 40 CFR Part 264, Subparts AA, BB, CC and 40 CFR § 264.1080(f); and 40 CFR § 264.1080(g). -- The provisions of 40 CFR § 264.1080(f); and 40 CFR § 264.1080(g) are hereby adopted and incorporated by reference and the remaining provisions of 40 CFR part 264, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding air emissions from process vents, equipment leaks, tanks, surface impoundments and containers.

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

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

8.2. 40 CFR §§ 265.12(a), 265.149 and 265.150. -- The provisions of 40 CFR §§ 265.12(a)(1) and (2), 265.149, and 265.150 are excepted from incorporation by reference. The Director of the Division of Water and Waste Management must receive identical notification.

8.3. 40 CFR §§265.341, 265.345, 265.347 (a), 265.352. -- The provisions of 40 CFR §§ 265.341, 265.345, 265.347(a) and 265.352 relating to incinerators are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from incinerators. The Division of Air Quality retains its authority to enforce the air monitoring items listed in 40 CFR §265.347(a) related to incinerating hazardous waste. The Division of Water and Waste Management retains its authority to enforce 40 CFR §§ 265.347(b)(c)(d).

8.4. Thermal Treatment. -- The provisions of 40 CFR Part 265, Subpart P -- Thermal Treatment are incorporated by reference except for the provisions of 40 CFR § 265.375 and 40 CFR § 265.383 which are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from thermal treatment units.

8.5. 40 CFR Part 265 Subparts AA, BB, CC and 40 CFR § 265.1080(f); and 40 CFR § 265.1080(g). -- The provisions of 40

CFR § 265.1080(f); and 40 CFR § 265.1080(g) are hereby adopted and incorporated by reference and the remaining provisions of 40 CFR part 265, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding air emission standards for process vents and air emission standards for equipment leaks, and air emission standards for tanks, surface impoundments and containers.

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

40 CFR Part 266. -- The provisions of 40 CFR part 266 are hereby adopted and incorporated by reference. Consult the rules of the Division of Air Quality regarding Subpart H of this part.

§33-20-10. LAND DISPOSAL RESTRICTIONS.

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

10.2. 40 CFR §§ 268.5, 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.

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

The term "Administrator" in 40 CFR § 268.40(b) will retain its meaning as defined in 40 CFR § 260.10.

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

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

11.2. 40 CFR § 270.2 Definitions.

11.2.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 will apply to obtain a Hazardous Waste Management Permit in West Virginia. All references in 40 CFR part 270 to 40 CFR part 124 will be deemed to be references to the applicable provisions of subsections 11.4 through 11.17 of this rule. To the extent of any inconsistency with 40 CFR part 270, the specific provisions contained herein will control.

### 11.3. Application Fees.

11.3.a. Any person who applies for a permit for the construction or operation of a hazardous waste management facility, or both, must submit as part of the 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 this rule are not required to pay a permit application fee.

11.3.b. The fee will be determined by the schedule set forth in table 1 of this rule. If the cumulative total of application fees imposed under this section equals or exceeds fifty thousand dollars (\$50,000) then the person required to pay the fees may, at the person's option, elect to submit the fee payments in installments over a three year period. The installments submitted to the Department 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.

11.3.c. ~~The Director reserves the right to promulgate rules establishing a permit renewal fee at a later date.~~ The fee for permit renewal is the same as for an initial permit.

### 11.4. Pre-application Public Meeting and Notice

11.4.a. Applicability. The requirements of this subsection will apply to West Virginia Hazardous Waste Management Part B permit applications applicants seeking initial permits for hazardous waste management units. The requirements of this section will also apply to West Virginia Hazardous Waste

Management Part B permit ~~applications~~ applicants seeking renewal of permits for those units, when the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a Class 3 permit modification (See 40 CFR § 270.42 for a description of permit modifications). The requirements of this section do not apply to permit modifications under 40 CFR § 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

11.4.b. Prior to the submission of a West Virginia Hazardous Waste Management Part B permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant must post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

11.4.c. The applicant must submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection 11.4.b, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the Part B application, in accordance with 40 CFR § 270.14(b).

11.4.d. The applicant must provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant must maintain, and provide to the permitting agency upon request, documentation of the notice.

11.4.d.1. The applicant must provide public notice in all of the following forms:

11.4.d.1.A. A newspaper advertisement. The applicant must publish a notice, fulfilling the requirements in paragraph 11.4.d.2 of this section, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Director will instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director determines that publication is necessary to

inform the affected public. The notice must be published as a display advertisement.

11.4.d.1.B. A visible and accessible sign. The applicant must post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph 11.5.d.2. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

11.4.d.1.C. A broadcast media announcement. The applicant must broadcast a notice, fulfilling the requirements in paragraph 11.4.d.2, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Director.

11.4.d.1.D. A notice to the permitting agency. The applicant must send a copy of the newspaper notice to the permitting agency and the Director will forward copies to the appropriate units of State and local government having jurisdiction over the area where the facility is, or is proposed to be, located; and to each state agency having any authority under state law with respect to the construction or operation of the facility.

11.4.d.2. The notices required under paragraph 11.4.d.1. of this section must include:

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

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

11.4.d.2.C. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

11.4.d.2.D. A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

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

11.5 Public Notice Requirements at the Application Stage.

11.5.a. Applicability. The requirements of this subsection apply to all West Virginia Hazardous Waste Management Part B permit ~~applications~~ applicants seeking initial permits for hazardous waste management units. The requirements of this section also apply to Hazardous Waste Management Part B permit ~~applications~~ applicants seeking renewal of permits for these units upon the expiration of the existing permit. The requirements of this section do not apply to permit modifications under 40 CFR § 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

11.5.b. Notification. The Director will provide public notice as required in subsection 11.5 of this rule when a Part B permit application has been submitted. The Director will provide public notice to:

11.5.b.1. The applicant;

11.5.b.2. All persons on a mailing list developed under subparagraph 11.11.d.1.D of this rule; and

11.5.b.3. The appropriate units of state and local government having jurisdiction over the area where the facility is proposed to be located; and to each state agency having any authority under state law with respect to the construction or operation of the facility, that a Part B permit application has been submitted to the Director and is available for review.

11.5.b.4. Any person otherwise entitled to receive notice under subdivision 11.5.b of this rule may waive the right to receive notice for any classes and categories of permits.

11.5.c. The notice will be published within a reasonable period of time after the application is received by the Director. The notice must include:

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

11.5.c.2. The name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries must be directed throughout the permit review process;

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

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

11.5.c.5. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

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

11.5.d. Concurrent with the notice required under subdivision 11.5.b, the Director must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

#### 11.6. Information Repository.

11.6.a. Applicability. The requirements of this section apply to all ~~applications~~ applicants seeking West Virginia Hazardous Waste Management Permits for hazardous waste management units.

11.6.b. The Director will assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director will consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If

the Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director will notify the facility that it must establish and maintain an information repository.

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

11.6.d. The information repository will be located and maintained at a site chosen by the facility. If the Director finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Director will specify a more appropriate site.

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

11.6.f. The facility owner/operator must be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Director. The Director will close the repository at his or her discretion, based on the factors in subdivision 11.6.b of this section.

#### 11.7. Application for a Permit.

11.7.a. Any person who requires a permit under this rule must complete, sign, and submit to the Director an application for each permit required under this rule. Applications are not required for hazardous waste permits by rule pursuant to 40 CFR § 270.60. The Director will not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. Permit applications must comply with the signature and certification requirements of 40 CFR § 270.11.

11.7.b. The Director will review for completeness every application. Each application submitted by a new hazardous waste management facility, will be reviewed for completeness by the Director within 30 days of its receipt. Each application submitted by an existing hazardous waste management facility (both Part A and Part B of the application), will be reviewed for completeness within 60 days of receipt. Upon completing the review, the Director will notify the applicant in writing whether the application is complete. If the application is incomplete, the Director will list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Director will specify in the notice of deficiency a date for submitting the necessary information. The Director will notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director will request additional information from the applicant but only when necessary to clarify, modify or supplement previously submitted material. Request for additional information will not render an application incomplete.

11.7.c. If the applicant fails or refuses to correct deficiencies in the application, the permit will be denied and appropriate enforcement actions will be taken under the applicable statutory provisions of WV Code §22-18-1 et seq.

11.7.d. If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she will notify the applicant and a date will be scheduled.

11.7.e. The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided for in subdivision 11.7.b.

11.7.f. For each application the Director will, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the Director intends to:

11.7.f.1. Prepare a draft permit;

11.7.f.2. Give public notice;

11.7.f.3. Complete the public comment period, including any public hearing;

11.7.f.4. Issue a final permit.

11.8. Modification, Revocation and Reissuance, or Termination of Permits.

11.8.a. Permits will be modified, revoked and reissued, or terminated either at the request of an interested person (including the permittee) or upon the Director's initiative. However, permits will only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR §§ 270.41 or 270.43. All requests must be in writing and must contain facts or reasons supporting the request.

11.8.b. If the Director decides the request is not justified, he or she will send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Director may be appealed to the Environmental Quality Board in accordance with section 15 of this rule.

11.8.b.1. If the Director initially decides to modify or revoke and reissue a permit under 40 CFR §§ 270.41 or 270.42 (c), he or she will prepare a draft permit under section 11.9 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the Director will require the submission of a new application.

11.8.b.2. In a permit modification under this section, only those conditions to be modified will be reopened when a new draft permit is prepared. When a permit is revoked and reissued under this section, the entire permit is reopened. During any revocation and reissuance proceeding the permittee must comply with all conditions of the existing permit until a new final permit is reissued.

11.8.b.3. "Classes 1 and 2 Modifications" as defined in 40 CFR §§ 270.42 (a) and (b) are not subject to the requirements of this section.

11.8.c. If the Director decides to terminate a permit under 40 CFR § 270.43, he or she will issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit which follows the same procedures as any draft permit prepared under subsection 11.9 of this rule.

#### 11.9. Draft Permits.

11.9.a. Once an application is complete, the Director will decide whether to prepare a draft permit or to deny the application.

11.9.b. If the Director decides to deny the permit application, he or she will issue a Notice of Intent to Deny. A Notice of Intent to Deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. If the Director's final decision is that the initial decision to deny the permit application was incorrect, he or she will withdraw the Notice of Intent to Deny and proceed to prepare a draft permit.

11.9.c. If the Director decides to issue a draft permit, he or she will prepare a draft permit that contains the following information:

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

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

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

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

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

#### 11.10. Fact Sheet

11.10.a. A fact sheet will be prepared for every draft permit for a hazardous waste management facility, which the Director finds is the subject of wide-spread public interest or raises major issues. The fact sheet will briefly set forth the principal facts and the significant factual, legal, and methodological and policy questions considered in preparing the draft permit. The Director will send the fact sheet to the applicant and to anyone who requests it.

11.10.b. The fact sheet will include when applicable:

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

11.10.b.2. The type and quantity of waste, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

11.10.b.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

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

11.10.b.5. A description of the process for reaching a final decision on a draft permit including:

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

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

11.10.b.5.C. Any other procedures by which the public participates in the final decision.

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

11.11. Public Notice of Permit Actions and Public Comment Period.

11.11.a. Scope. The Director will give public notice if the following actions have occurred:

11.11.a.1. A draft permit has been prepared; and

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

11.11.b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under subsection 11.8 of this rule. Written notice of that denial will be given to the requester and to the permittee.

11.11.c. Timing. Public notice of the preparation of a draft permit (including a Notice of Intent to Deny a Permit Application) required under subdivision 11.11.a of this rule will allow at least forty-five (45) days for public comment. Public notice of a public hearing will be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

11.11.d. Public notice of activities described in subdivision 11.11.a will be given by the following methods:

11.11.d.1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

11.11.d.1.A. The applicant;

11.11.d.1.B. Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD or other permit under the Clean Air Act or West Virginia Code §22-5-1 et. seq., NPDES, 33 U.S.C. §1344, or sludge management permit for the same facility or activity;

11.11.d.1.C. Federal and state agencies with jurisdiction over fish, shell fish and wildlife resources and over coastal zones management plans, the advisory council on historic preservation, and the state historic preservation office, as applicable;

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

11.11.d.1.D.1. Including those who request in writing to be on the list;

11.11.d.1.D.2. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

11.11.d.1.D.3. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in the publications as regional and state funded newsletters, environmental bulletins, or state law journals. The Director will update the mailing lists from time to time by requesting written indications of continued interest from those listed. The Director will delete from the lists the name of any person who fails to respond to the request.

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

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

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

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

11.11.d.4. Any other method reasonably calculated to give actual notice of the action in question to the person potentially effected by it, including press releases or any other forum or medium to elicit public participation.

11.11.e. All public notices issued under this section will contain the following minimum information:

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

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

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

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

11.11.e.5. A brief description of the comment procedures required by subsections 11.12 and 11.13 of this rule and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final decision.

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

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

11.11.f. Public notices for hearings. In addition to the general public notice described in subdivision 11.11.e of this

section, the public notice of a hearing will contain the following information:

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

11.11.f.2. Date, time, and place of the hearing; and

11.11.f.3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

11.11.g. In addition to the general public notice described in subdivision 11.11.e of this section, all persons identified in subparagraphs 11.11.d.1.A, 11.11.d.1.B, and 11.11.d.1.C of this section will be mailed a copy of the fact sheet, the permit application and the draft permit, as applicable.

#### 11.12. Public Comments and Requests for Public Hearings.

During the public comment period provided under subsection 11.11. of this rule, any interested person may submit written comments on the draft permit and may request a public hearing, if a hearing has not already been scheduled. A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision and will be answered as provided in subsection 11.16 of this rule.

#### 11.13. Public Hearings.

11.13.a. The Director will hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit.

11.13.b. The Director will also hold a public hearing at his or her discretion, whenever, for instance, a hearing might clarify one or more issues involved in the permit decision.

11.13.c. The Director will hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under subdivision 11.11.c of this rule; whenever possible

the Director will schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.

11.13.d. Public notice of the hearing will be given as specified in subsection 11.11 of this rule.

11.13.e. Whenever a public hearing will be held the Director will designate a presiding officer for the hearing who will be responsible for its scheduling and orderly conduct.

11.13.f. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits will be set upon the time allowed for oral statements, and the submission of statements in writing will be required. The public comment period under subsection 11.11 of this rule will automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

11.13.g. A tape recording or written transcript of the hearing will be made available to the public.

#### 11.14. Reopening of the Public Comment Period.

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

11.14.a.1. Prepare a new draft permit, appropriately modified, under subsection 11.9 of this rule.

11.14.a.2. Prepare a revised fact sheet under subsection 11.10. of this rule and reopen the comment period.

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

11.14.b. Comments filed during the reopened comment period must be limited to the substantial new questions that caused its

reopening. The public notice under subsection 11.11 of this rule will define the scope of the reopening.

11.14.c. Public notice of any of the above actions will be issued under subsection 11.11 of this rule.

11.15. Issuance and Effective Date of Permit.

11.15.a. After the close of the public comment period on a draft permit, the Director will issue a final permit decision. The Director will notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice will include reference to the procedures for appealing a decision on the permit. For purposes of this section the final permit decision means a final decision to issue, deny, modify, or revoke and reissue, or terminate a permit.

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

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

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

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

11.16. Response to Comments.

11.16.a. At the time that any final permit decision is issued, the Director will issue a response to comments. This response will:

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

11.16.a.2. Briefly describe and respond to all comments on the draft permit or the permit application raised during the public comment period, or during any hearing.

11.16.b. The response to comments will be available to the public.

11.17. Administrative Record.

11.17.a. The provisions of a draft permit prepared under subsection 11.9 of this rule will be based on the administrative records consisting of:

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

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

11.17.a.3. The fact sheet;

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

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

11.17.b. The Director will base final permit decisions on the administrative record consisting of:

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

11.17.b.2. All comments received during the public comment period provided under subsection 11.11 of this rule (including any extension or reopening under subsection 11.14 of this rule);

11.17.b.3. The tape or transcript of any hearing(s) held under subsection 11.13 of this rule;

11.17.b.4. Any written material submitted at the hearing;

11.17.b.5. The response to comments required by subsection 11.16 of this rule which identified and supports any change made in the draft permit and any new material placed in the record under that subsection;

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

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

11.17.b.8. The final permit.

11.17.c. The administrative record will be complete on the date the final permit is issued.

11.17.d. Material readily available at the issuing agency office or published material that is generally available, and that is included in the administrative record under subdivisions 11.17.a and 11.17.b of this rule, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

#### 11.18. Public Access to Information.

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

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

11.18.c. Any document submitted to the Director which contains information for which claim of confidentiality is made must be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director. The document must be submitted in two (2) separate parts. The first part must contain all information which is not deemed by the person preparing the report as confidential and must 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.

11.18.d. No information will be protected as confidential information by the Director unless it is submitted in accordance with the provisions of subdivision 11.18.c of this rule and no information which is submitted in accordance with the provision of subdivision 11.18.c of this rule will be afforded protection as confidential information unless the Director finds that the protection is necessary to protect trade secrets. The person who submits information claimed to be confidential will receive written notice from the Director as to whether the information has been accepted as confidential or not.

11.18.e. All information which meets the tests of subdivision 11.18.d of this rule will be marked with the term "ACCEPTED" and will be protected as confidential information. If the person fails to satisfactorily demonstrate to the Director that information in the form presented meets the criteria of subdivision 11.18.d of this rule, the Director will mark the information "REJECTED" and promptly return it to the person who submitted the information. The Director will retain a copy of the information for reference.

11.18.f. Nothing contained herein will be construed to restrict the release of relevant confidential information during situations declared to be emergencies by the Director or his designee.

11.18.g. Nothing in subsection 11.18 of this rule will be construed as limiting the disclosure of information by the department to any officer, employee, or authorized representative of the state or federal government concerned with effecting the purposes of this subsection.

11.18.h. Persons interested in obtaining information pursuant to this subsection must submit a request in accordance with the Environmental Quality Board rule 46 CSR 8.

11.19. 40 CFR §270.12. The provisions of 40 CFR §270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provision of W. Va. Code, §22-18-12 and subsection 11.18 of this rule.

11.20. 40 CFR § 270.24. The provisions of 40 CFR § 270.24 are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from process vents.

11.21. 40 CFR §§ 270.60(b) and 270.64. The provisions of 40 CFR §§ 270.60(b) and 270.64 are hereby adopted and incorporated by reference. Consult the rules of the Division of Water and Waste Management Resources and the Environmental Quality Board regarding additional requirements for underground injection wells.

11.22. 40 CFR §270.155. The provisions of 40 CFR §270.155 relating to the administrative appeal of a decision to approve or deny a Remedial Action Plan (RAP) application are hereby modified for the purposes of this rule as follows: Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director's decision to approve or deny the RAP application to the Environmental Quality Board under subsections 11.4 through 11.17 of this rule. Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of a RAP may be made to the same extent as for final permit decisions under §11 of this rule. The Director will give public notice of any grant of review of a RAP by the Environmental Quality Board through the same means used to provide notice under subsections 11.4 through 11.17 of this rule.

§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 must notify the Director in writing of the transfer.

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

§33-20-13. UNIVERSAL WASTE RULE.

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

13.2. 40 CFR §§ 273.20, 273.40, 273.56 -- The provisions of 40 CFR §§ 273.20, 273.40, and 273.56 relating to exports are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.6.a of this rule does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of 40 CFR part 273 must file with the Director copies of all documentation, manifests, exception reports, annual reports or records, submitted to EPA, the Administrator or the regional Administrator as required by 40 CFR part 273.

13.3. 40 CFR § 273.70 -- The provisions of 40 CFR § 273.70 Imports are hereby adopted and incorporated by reference. Persons managing universal waste that is imported to West Virginia are subject to the requirements of this rule.

13.4. 40 CFR §§ 273.80 and 273.81 -- The provisions of 40 CFR §§ 273.80 and 273.81 are excepted from incorporation by reference. Consult the provisions of subdivision 2.5.d of this rule to petition to include a waste as a universal waste.

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

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

14.2. 40 CFR § 279.82(b). -- The term EPA at 40 CFR § 279.82(b) will have the meaning of United States Environmental Protection Agency.

§33-20-15. APPEAL RIGHTS. Any person aggrieved or adversely affected by the failure or refusal of the Director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the Director under the provisions of this rule, may appeal to the Environmental Quality Board in accordance with the provisions of W. Va. Code §22B-1-1 et seq.

**TABLE 1  
PERMIT APPLICATION FEE SCHEDULE**

**STORAGE**

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

**DISPOSAL**

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

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

**TREATMENT**

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

**EMERGENCY PERMITS**

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

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

**MISCELLANEOUS**

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

**QUESTIONNAIRE**

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

DATE: July 31, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV Department of Environmental Protection  
Division of Water and Waste Management  
1356 Hansford Street  
Charleston, WV 25301-1401  
Telephone: 304-558-5989

LEGISLATIVE RULE TITLE: Hazardous Waste Management Rule 33 CSR

1. Authorizing statute(s) citation W.Va. Code §§22-18-6.
2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 11, 2003.
- b. What other notice, including advertising, did you give of the hearing?  
DEP Calendar of Events, DEP Website  
Secretary of State's Stateline  
18 newspapers around the state
- c. Date of Public Hearing(s) or Public Comment Period ended:  
July 14, 2003.
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
  
Attached No person attended public hearing.  
  
No comments received Comments attached

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

July 31, 2003.

- f. **Name, title, address and phone/fax/email numbers** of agency person(s) to receive *all written correspondence* regarding this rule: (Please type)

Carroll Cather  
Environmental Resource Specialist III  
Division of Water and Waste Management  
1356 Hansford Street  
Charleston, WV 25301-1401  
Telephone: 304-558-2505  
Fax: 304-558-0256  
Email: ccather@dep.state.wv.us.

- g. **IF DIFFERENT FROM ITEM 'f',** please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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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.

Not applicable.

- b. Date of hearing or comment period.

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

- d. Attach findings and determinations and reasons:

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**Public hearing**  
**Hazardous Waste Management Rule**  
**33CSR20**  
**July 14, 2003**  
**5:30 p.m.**  
**Jessica Greathouse, facilitator**

**Hearing transcript**

This is a public hearing for proposed changes to legislative rule 33CSR20, Hazardous Waste Management.

The proposed amendment adopts and incorporates by reference federal regulations pertaining to hazardous waste management 40CFR parts 260 through 279 effective on July 1, 2002.

The rule is proposed to adopt changes to federal hazardous waste management regulations into the state hazardous waste management rule, enabling the state hazardous waste program to maintain consistency with the federal program.

Let the record reflect that there are no commenters in attendance. The formal record is now closed.