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West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

January 12, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 33CSR20 - "Hazardous Waste Management Rule"

Dear Ms. Cooper:

This letter will serve as my approval to the file the above-referenced rule as a "Notice of Rule Modification" with your office and the Legislative Rule-Making Review Committee.

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

Sincerely yours,

Michael C. Castle
Commissioner

MCC:cc

cc: Mike Dorsey
Carroll Cather
Carrie Chambers

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

SERIES 20
HAZARDOUS WASTE MANAGEMENT RULE

§ 33-20-1. SCOPE AND AUTHORITY.

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

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

1.3. **Filing Date.** --

1.4. **Effective Date.** -- ~~July 1, 1999~~

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

1.6. **Incorporation by Reference.** -- Whenever either federal statutes or regulations or state statutes or rules are incorporated by reference into this rule, the reference is to that statute or regulation in effect on July 1, 1997~~8~~, unless otherwise noted in the text of this rule. This incorporation by reference is not intended to replace or abrogate federal authorities granted the Resource Conservation and Recovery Act of 1976.

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

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

1.6.a.2. "Chief of the office of waste management, West Virginia division of environmental protection" shall be substituted for "administrator," "regional administrator," and "director." In those sections that are not adopted by reference or that are not delegable to the state, "administrator", "regional administrator", and "director" shall have the meaning defined in 40 CFR § 260.10.

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

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

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

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

1.9. Provisions Applied Prospectively. -- The provisions of this rule are to be applied prospectively. All orders,

determinations, demonstrations, rules, permits, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted, approved or allowed to become effective by the chief, and which are in effect on the date this rule becomes effective, shall continue in effect according to their terms unless modified, suspended or revoked in accordance with the law.

1.10. This rule references the provisions of West Virginia division of environmental protection, office of air quality rule, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities" effective on July 1, 2000.

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

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

- (1) 2.1.a.3.A. Batteries as described in 40 CFR § 273.2;
 - (2) 2.1.a.3.B. Pesticides as described in 40 CFR § 273.3;
- and
- (3) 2.1.a.3.C. Thermostats and mercury containing lamps as described in 40 CFR § 273.4.

2.1.a.4. The provisions of Federal Register document dated November 30, 1998 (Volume 63, Number 229) on pages 65873-65947: the final rule titled "Hazardous Remediation Waste Management Requirements" (HWIR-media) are hereby adopted and incorporated by reference.

2.1.a.5. The provisions of Federal Register document dated October 22, 1998 (Volume 63, Number 204) on pages 56709-56735: the final rule titled "Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-closure Permit Requirements; Closure Process" are hereby adopted and incorporated by reference.

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

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

2.4. Petitions for Waste Exclusions.

~~2.4.a. Persons desiring to exclude a waste at a particular generating facility from the lists set forth in 40 CFR part 261 may petition the chief for such an exclusion after having received approval from the administrator of the environmental protection agency. The petition shall include:~~

Any person seeking to exclude a waste at a particular generating facility from 40 C.F.R. § 261.3 or 40 C.F.R. part 261, subpart D, as incorporated by this rule, may petition the chief for such an exclusion following the procedures established in 40 C.F.R. § 260.20 and 40 C.F.R. § 260.22.

Note: The division of environmental protection intends to utilize EPA guidance in evaluating delisting petitions.

~~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.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 chief providing for the recovery of all reasonable costs incurred by the division 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 shall be determined by the number of hours worked under the agreement by the primary division of environmental protection employee multiplied by 2.5 times the hourly rate of such employee and then adding direct expenses incurred by such employee. Costs related to independent contractors retained by the division of environmental protection to assist in the review and investigation of petitions shall be included as direct expenses.

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

2.4.b.3. If, upon review of the itemized list of estimated costs submitted by the division of environmental protection, the petitioner determines not to continue the petition process, the petitioner may submit a certified letter to the chief withdrawing the petition. If such letter is submitted within ten (10) days of the date of receipt of the division of environmental protection's list of estimated costs, the petitioner shall not be liable for any costs incurred in excess of the initial application fee.

~~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.~~

2.4.c. Where the administrator of the EPA has granted a petition to exclude hazardous waste from 40 C.F.R. § 261.3 or 40 C.F.R. part 261, subpart D, pursuant to 40 C.F.R. § 260.22, the chief shall accept such a 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 C.F.R. § 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 may petition the chief for such an inclusion after having received approval from the administrator of the environmental protection agency. The petition shall include:

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

2.5.a.2. A copy of the administrator's approval granting the ~~exclusion pursuant to petition under 40 CFR § 260.23 and~~ CFR § 260.20 and 40 CFR part 273; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.4. In addition to adoption and incorporation by reference of 40 CFR part 261 effective on July 1, 1998:

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

3.4.a. The provisions of Federal Register document dated November 30, 1998 (Volume 63, Number 229) on pages 65873-65947; the final rule titled "Hazardous Remediation Waste Management Requirements" (HWIR-media) are hereby adopted and incorporated by reference.

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

3.4.b. The provisions of Federal Register document dated October 22, 1998 (Volume 63, Number 204) on pages 56709-56735; the

final rule titled "Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-closure Permit Requirements; Closure Process" are hereby adopted and incorporated by reference.

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

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

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

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

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

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

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

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

4.1.c In addition to the notification requirements specified in this section, the chief shall require notification of hazardous waste activities, as applicable, pursuant to the following:

4.1.c.1. The provisions of Federal Register document dated November 30, 1998 (Volume 63, Number 229) on pages 65873-65947: the final rule called "Hazardous Remediation Waste Management Requirements" (HWIR-media) are hereby adopted and incorporated by reference.

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

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

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

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

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

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

4.2.f. New generators and those initiating activities subsequent to the EPA notification period referenced in subdivision

4.1.a. of this rule shall comply with the EPA identification number requirements and shall provide a copy of their application for an EPA identification number to the administrator.

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

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

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

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

5.2.b. All references to 40 CFR § 262.10(g) shall be deemed references to subsection 5.2 of this rule 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 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 E shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by and within the time frames set forth in subpart E.

5.4. 40 CFR Part 262, Subpart F H. -- The provisions of 40 CFR part 262, subpart 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 shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by and within the time frames set forth in subpart H.

5.5. The provisions of Federal Register document dated November 30, 1998 (Volume 63, Number 229) on pages 65873-65947: the final rule titled "Hazardous Remediation Waste Management Requirements" (HWIR-media) are hereby adopted and incorporated by reference.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.9. The provisions of Federal Register document dated November 30, 1998 (Volume 63, Number 229) on pages 65873-65947: the final rule titled "Hazardous Remediation Waste Management Requirements" (HWIR-media) are hereby adopted and incorporated by reference.

7.10. The provisions of Federal Register document dated October 22, 1998 (Volume 63, Number 204) on pages 56709-56735: the final rule titled "Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-closure Permit Requirements; Closure Process" are hereby adopted and incorporated by reference.

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

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

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

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

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

8.4. 40 CFR §§265.345, 265.347, 265.352. -- The provisions of 40 CFR §§ 265.341, 265.345, 265.347 and 265.352 relating to incinerators are excepted from incorporation by reference. Consult

the rules of the office of air quality regarding emissions from incinerators.

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

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

8.7. The provisions of Federal Register document dated November 30, 1998 (Volume 63, Number 229) on pages 65873-65947: the final rule titled "Hazardous Remediation Waste Management Requirements" (HWIR-media) are hereby adopted and incorporated by reference.

8.8. The provisions of Federal Register document dated October 22, 1998 (Volume 63, Number 204) on pages 56709-56735: the final rule titled "Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-closure Permit Requirements; Closure Process" are hereby adopted and incorporated by reference.

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

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

§ 33-20-10. LAND DISPOSAL RESTRICTIONS.

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

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

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

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

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

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

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

10.5. The provisions of Federal Register document dated November 30, 1998 (Volume 63, Number 229) on pages 65873-65947: the final rule titled "Hazardous Remediation Waste Management Requirements" (HWIR-media) are hereby adopted and incorporated by reference.

~~10.6. The provisions of 40 CFR §§268.1, 268.4, 268.7 and 268.9 regarding Land Disposal Restrictions amended and finalized in 62 Federal Register 25998 (May 12, 1997) and 63 Federal Register 28555 (May 26, 1998) are hereby incorporated by reference.~~

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

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

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

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

11.3. 40 CFR § 270.2 Definitions.

11.3.a. Definition of "RCRA permit". -- For purposes of this section, the term "RCRA permit" means "West Virginia hazardous waste management permit". The following additional requirements shall

apply to obtain a hazardous waste management permit in West Virginia. All references in 40 CFR part 270 to 40 CFR part 124 shall be deemed to be references to the applicable provisions of subsections 11.5. through 11.18 of this rule. To the extent of any inconsistency with 40 CFR part 270, the specific provisions contained herein shall control.

11.4. Application Fees.

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

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

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

11.5. Pre-application Public Meeting and Notice

11.5.a. Applicability. The requirements of this subsection ~~section 11.5.~~ shall apply to West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to West Virginia hazardous waste management Part B permit applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a Class 3 permit modification (See 40 CFR §270.42 for a description of permit modifications). The requirements of this section do not apply to permit modifications under 40 CFR §270.42 or to applications that are submitted for the sole purpose of conducting post-closure

activities or post-closure activities and corrective action at a facility.

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

11.5.c. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection 11.5.b. of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application, in accordance with 40 CFR §270.14(b).

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

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

11.5.d.1.A. A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in subsection paragraph 11.5.d.2. of this section, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the chief shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the chief determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

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

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

subsection 11.5.d.2. of this section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the chief.

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

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

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

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

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

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

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

11.6 Public Notice Requirements at the Application Stage.

11.6.a. **Applicability.** The requirements of this ~~section~~ ~~11.6.~~ subsection shall apply to all West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to hazardous waste management Part B permit applications seeking renewal of permits for such units upon the expiration of the existing permit. The requirements of this section do not apply to permit modifications under 40 CFR § 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

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

11.6.b.1. The applicant;

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

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

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

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

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

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

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

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

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

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

11.6.d. Concurrent with the notice required under ~~section~~ subdivision 11.6.b. of this section, the chief must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

11.7. Information Repository.

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

11.7.b. The chief may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the chief shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the chief determines, at any time after submittal of a permit application, that there is a need for a repository, then the chief shall notify the facility that it must establish and maintain an information repository.

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

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

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

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

11.8. Application for a Permit.

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

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

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

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

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

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

11.8.f.1. Prepare a draft permit;

11.8.f.2. Give public notice;

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

11.8.f.4. Issue a final permit.

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

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

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

11.9.b.1. If the chief tentatively decides to modify or revoke and reissue a permit under 40 CFR §§270.41 or 270.42 (c), he or she shall prepare a draft permit under section 11.10. incorporating the proposed changes. The chief may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the chief shall require the submission of a new application.

11.9.b.2. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the

entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

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

11.9.c. If the chief tentatively decides to terminate a permit under 40 CFR § 270.43, he or she shall issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit which follows the same procedures as any draft permit prepared under section subsection 11.10. of this rule.

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

11.10. Draft Permits.

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

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

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

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

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

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

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

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

11.11. Fact Sheet

11.11.a. A fact sheet shall be prepared for every draft permit for a hazardous waste management facility, which the chief finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, and methodological and policy questions considered in preparing the draft permit. The chief shall send the fact sheet to the applicant and, on request, to any other person.

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

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

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

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

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

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

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

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

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

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

11.12. Public Notice of Permit Actions and Public Comment Period

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

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

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

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

11.12.c. Timing. Public notice of the preparation of a draft permit (including a Notice of Intent to Deny a Permit Application) required under ~~section~~ subdivision 11.12.a. of this rule shall allow at least forty-five (45) days for public comment. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

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

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

11.12.d.1.A. The applicant;

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

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

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

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

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

~~(c)~~11.12.d.1.D.iii. 3. Notifying the public of the opportunity to be put on the mailing list through periodic public in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. (The chief may update the mailing lists from time to time by requesting written indications of continued interest from those listed. The chief may delete from the lists the name of any person who fails to respond to such request.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~11.12.f.1.A.~~ 11.12.f.2. Date, time, and place of the hearing; and

~~11.12.f.1.B.~~ 11.12.f.3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

11.12.g. In addition to the general public notice described in ~~section~~ subdivision 11.12.e. of this section, all persons identified in ~~section~~ subparagraphs 11.12.d.1.A, 11.12.d.1.B, and

11.12.d.1.C of this section shall be mailed a copy of the fact sheet, the permit application and the draft permit, as applicable.

11.13. Public Comments and Requests for Public Hearings

During the public comment period provided under section subsection 11.12. of this rule, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in section subsection 11.17 of this rule.

11.14. Public Hearings.

11.14.a. The chief shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit.

11.14.b. The chief may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

11.14.c. The chief shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under section subdivision 11.12.c. of this rule; whenever possible the chief shall schedule a hearing under this section at a location in convenient to the nearest population center to the proposed facility.

11.14.d. Public notice of the hearing shall be given as specified in section subsection 11.12. of this rule.

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

11.14.f. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under section subsection 11.12. of this rule shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

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

11.15. Reopening of the Public Comment Period.

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

11.15.a.1. Prepare a new draft permit, appropriately modified, under Section subsection 11.10. of this rule.

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

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

11.15.b. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section subsection 11.12. of this rule shall define the scope of the reopening.

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

11.16. Issuance and Effective Date of Permit.

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

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

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

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

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

11.17. Response to Comments.

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

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

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

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

11.18. Administrative Record.

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

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

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

11.18.a.3. The fact sheet;

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

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

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

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

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

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

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

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

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

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

11.18.b.8. The final permit.

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

11.18.d. Material readily available at the issuing agency office or published material that is generally available, and that is included in the administrative record under subdivisions 11.18.a. and 11.18.b. of this rule, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

11.19. Public Access to Information.

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

11.19.b. It shall be the responsibility of the person claiming any information as confidential under the provisions of this subsection to clearly mark each page containing such

information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

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

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

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

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

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

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

11.20. The provisions of Federal Register document dated October 22, 1998 (Volume 63, Number 204) on pages 56709-56735: the final rule titled "Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-closure Permit Requirements; Closure Process" are hereby adopted and incorporated by reference.

~~11.20.~~

11.21. 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 11.19. of this rule.

~~11.21.~~

11.22. 40 CFR §270.24. The provisions of 40 CFR §270.24 are excepted from incorporation by reference. Consult the rules of the office of air quality regarding emissions from process vents.

~~11.22.~~

11.23. 40 CFR §§270.60(b) and 270.64. The provisions of 40 CFR §§270.60(b) and 270.64 are hereby adopted and ~~excepted from incorporation~~ by reference. Consult the rules of the office of water resources and the environmental quality board regarding the additional requirements for underground injection wells.

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

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

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

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

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

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

§ 33-20-13. UNIVERSAL WASTE RULE.

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

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

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

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

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

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

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

13.5.a. "Mercury containing lamp" means an electric lamp in which mercury is purposely introduced by the manufacturer for the

operation of the lamp. Mercury containing lamps commonly include fluorescent lamps.

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

~~(1)~~ 13.5.b.1. Batteries as described in 40 CFR § 273.2;

~~(2)~~ 13.5.b.2. Pesticides as described in 40 CFR § 273.3;

and

~~(3)~~ 13.5.b.3. Thermostats and mercury containing lamps as described in 40 CFR § 273.4.

13.6. 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 shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by part 40 CFR part 273.

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

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

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

14.1. 40 CFR Part 279. -- The provisions of 40 CFR part 279 are hereby adopted and incorporated by reference with the exception contained in this section. Consult the rules of the office of air quality regarding the burning of used oil. Notwithstanding the effective date of this rule, the provisions of 40 CFR part 279 effective on July 1, 1995 are hereby adopted and incorporated by reference.

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

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

§ 33-20-15. APPEAL RIGHTS.~~15-1-~~ Any person aggrieved or adversely affected by the failure or refusal of the director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the director under the provisions of this rule, may appeal to the environmental quality board in accordance with the provisions of ~~article 1, chapter twenty-two-b (§22B-1-1 et seq.)~~ of the West Virginia Code W. Va. Code §22B-1-1 et seq.

**TABLE 1
PERMIT APPLICATION FEE SCHEDULE**

STORAGE

| EPA CODE ACTIVITY | FEE | FEE |
|---------------------------------------|---|--|
| S01 Container | <100 tons capacity \$2,500.00 | ≥100 tons capacity \$3,750.00 |
| S02 Tank | <100 tons capacity \$2,500.00 | ≥100 tons capacity \$3,750.00 |
| S04 Surface Impoundment | <1,000 tons capacity \$10,000.00 | ≥1,000 tons capacity \$12,500.00 |
| S05 Drip Pad | \$2,500.00 | |
| S03 Waste Pile | <100 tons capacity \$5,000.00 | ≥100 tons capacity \$7,500.00 |
| S06 Waste Pile (Containment Bldg.) | <100 tons capacity \$5,000.00 | ≥100 tons capacity \$7,500.00 |
| S99 HWIR Staging Pile | <100 tons capacity \$5,000.00 | ≥100 tons capacity \$7,500.00 |

DISPOSAL

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

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

TREATMENT

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

EMERGENCY PERMITS

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

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

MISCELLANEOUS

| EPA CODE ACTIVITY | FEE |
|---|-------------|
| Permit Modification under 40 CFR, 270.42 (Class I) | \$ 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 |



FILED

JAN 11 2 44 PM '00

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

December 9, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Carrie Chambers
DEP
10 McJunkin Road
Nitro, WV 25143
FROM: Legislative Rule-Making Review Committee
Proposed Rule: **Hazardous Waste Management, 33CSR20**

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

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

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Office of Waste Management
Subject: Hazardous Waste Management Rule
CSR Cite: 33CSR20
Counsel: JAA

SEARCHED
SERIALIZED
INDEXED
FILED
AUG 11 1999
FBI - BOSTON

PERTINENT DATES

Filed for public comment: June 17, 1999
Public comment period ended: July 22, 1999
Filed following public comment period: August 4, 1999
Filed LRMRC: August 4, 1999
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Brief Summary

The amendments to this rule will enable the Office of Waste Management assume the hazardous waste delisting responsibilities from the EPA, and, to streamline the approval process for environmental cleanups of hazardous contamination by expediting the cleanup plan approval process of closed or closing hazardous waste management facilities. The agency is assessing a new fee to those permittees wishing to utilize the new approval process.

Section Summary

Section 1.10 incorporates the Office of Air Quality hazardous waste rule references into this rule.

Section 2.1.a.4 incorporates federal rule provisions for "Hazardous Remediation Waste Management Requirements."

Section 2.1.a.5 incorporates federal rule provisions for "Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-closing Hazardous Waste Management Facilities: Post-closure Permit Requirements; Closure Process."

Section 2.4 establishes requirements for Petitions for Waste Exclusions. Section 2.4.a now provides that the federal petition requirements as incorporated by this rule must be followed. Section 2.4.b provides that a \$1,000.00 fee must be submitted with any petition, and the agency will assess any petitioner the recoverable costs for processing the petition. "Recoverable costs" are defined as 2.5 times the hourly rate of the agency employee and any additional direct costs. Within thirty days of receipt of a petition, the agency must send the applicant a written estimate of the costs to process the petition. Upon receipt of this notice the applicant may withdraw the petition. If the petition is withdrawn, the applicant can not be held liable for more than the posted \$1,000.00. Section 2.4.c provides that the agency will accept any EPA determinations regarding excluding hazardous wastes from certain federal requirements, provided that the applicant submits a copy of the petition, and the agency has no scientifically supportable reason to deny a petition.

Section 3.4 is amended by listing new federal incorporation cites.

Section 4.1.c. inserts the notification requirements for hazardous waste activities included in the "Hazardous Remediation Waste Management Requirements."

Section 5.5, 7.9 7.10, 8.7, 8.8 and 10.5 are amended by incorporating all the appropriate updated requirements relating to "Hazardous Remediation Waste Management Requirements."

Old reference dates are updated and stylistic changes occur through the remainder of the rule.

Table 1 of the rule which lists fees for permit applications is amended by striking the fee for S99 HWIR Staging Piles of over 100 tons capacity of \$7,500.00 and inserting HWIR Staging Pile application fee of \$1,250.00.

AUTHORITY

Statutory authority: W.Va. Code, §22-18-4, which reads:

The division of environmental protection is hereby designated as the hazardous waste management lead agency for this state for purposes of Subtitle C of the Resource Conservation and Recovery Act, and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this article, the director is hereby authorized to cooperate with the federal environmental protection agency and other agencies of the federal government, this state and other states and other interested persons in all matters relating to hazardous waste management.

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?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.