

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

Division of Environmental Protection
AGENCY: Water Resources - Solid Waste Management TITLE NUMBER: 47

CITE AUTHORITY W.Va. Code §22-18-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 35

TITLE OF RULE BEING AMENDED: Hazardous Waste Management Regulations

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

B. F. Smith

Authorized Signature

16-40



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

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

July 28, 1995

Ms. Judy Cooper
Director, Administrative Law Division
Secretary of State's Office
Building 1, Suite 157K
Charleston, West Virginia 25305

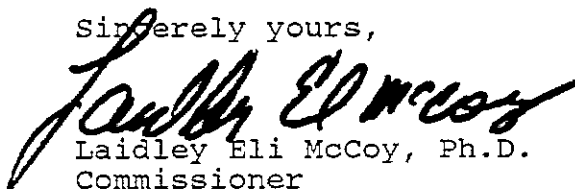
RE: 47CSR35 - "Hazardous Waste Management Rules"

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned agency-approved rule with the Secretary of State's Office and Legislative Rule-Making.

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

Sincerely yours,


Laidley Eli McCoy, Ph.D.
Commissioner

LEM;RTH:cc

Attachment

John Brown

STATEMENT OF CIRCUMSTANCES
PROPOSED LEGISLATIVE RULE CONCERNING
THE HAZARDOUS WASTE MANAGEMENT REGULATIONS

AGENCY: Division of Environmental Protection, Water
Resources and Solid Waste Management

REGULATIONS: Title 47, Series 35, "Hazardous Waste
Management Regulations."

AUTHORITY: West Virginia Code Section 22-18-6.

ACTION: Filing of a Proposed Legislative Rule.

The current rule contains areas of regulation that can be clarified and made more accessible to the regulated community. In addition, the modifications make the proposed rule more likely to receive authorization from the United States Environmental Protection Agency to allow for the state to control the federal program. It also eliminates a section that was previously adopted because that section has been superseded by more current regulations and one section that did not meet the stringency requirements of the U.S. EPA.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 47, Series 35, "Hazardous Waste Management Regulations"

Type of Rule: XX Legislative Interpretive Procedural

Agency Division of Environmental Protection, Water Resources and Solid Waste Management

Address Division of Environmental Protection/Office of Waste Management
1356 Hansford Street
Charleston, WV 25301

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIR & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. **Explanation of above estimates:** These regulations implement federal mandated changes to the State's hazardous waste management program. No new administrative expenditures are anticipated.
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 47, Series 35, "Hazardous Waste Management Regulations"

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

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

The rule adopts additional federal regulations required for the State to maintain RCRA program authorization. In some instances, those entities directly affected by the rules (i.e., generators, transporters) may require capital expenditures to come into compliance with the new provisions.

C. Economic Impact on Citizens/Public at Large.

No impact.

Date: 6/22/95

Signature of Agency Head or Authorized Representative

Robert M. Bell

DATE: July 31, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

LEGISLATIVE RULE TITLE: Title 47, Series 35

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

2: a. Date filed in State Register with Notice of Hearing

June 23, 1995

b. What other notice, including advertising, did you give of the hearing?

Statewide News Release

c. Date of Hearing(s) July 24, 1995

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

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

July 31, 1995

f. Name and phone number(s) of agency person(s) to contact for additional information:

H. Michael Dorsey, Assistant Chief

Compliance Monitoring and Enforcement Section

Office of Waste Management

1356 Hansford St.
Charleston, WV 25301
(304) 558-2505

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

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

N/A

b. Date of hearing: _____

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

d. Attach findings and determinations and reasons:

Attached _____

SUMMARY OF PROPOSED LEGISLATIVE RULE CONCERNING
THE HAZARDOUS WASTE MANAGEMENT REGULATIONS

AGENCY: Division of Environmental Protection, Water
Resources and Solid Waste Management

REGULATIONS: Title 47, Series 35, "Hazardous Waste
Management Regulations."

AUTHORITY:- West Virginia Code Section 22-18-6

ACTION: Filing of a Proposed Legislative Rule.

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

The proposed rule clarifies the current rule and satisfies federal requirements of consistency and equivalent stringency to allow authorization of the federal program to the state and ensure that significant federal funds are allotted to the West Virginia program each year. It also eliminates a section that was previously adopted because that section has been superseded by more current regulations and one section that did not meet the stringency requirements of the U.S. EPA.

FILED

JUL 31 3 36 PM '95

TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION, WATER RESOURCES
AND SOLID WASTE MANAGEMENT

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 35
HAZARDOUS WASTE MANAGEMENT RULE

§ 47-35-1. SCOPE AND AUTHORITY.

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

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

1.3 Filing Date.

1.4 Effective Date.

1.5 Amendment of Former Rule. -- This rule amends the Hazardous Waste Management Regulations, 47 CSR 35, 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, ~~1994~~ 1995, unless otherwise noted in the text of this rule. This Incorporation by Reference is not intended to replace or abrogate federal authorities granted the Resource Conservation and Recovery Act of 1976.

1.6.1 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:

1.6.1.a "Office of Waste Management, West Virginia Division of Environmental Protection" shall be substituted for "Environmental Protection Agency."

1.6.1.b "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 yet 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.

1.6.1.c 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.

1.6.1.d 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 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 Air Quality Board rule on incineration of hazardous waste, 45 CSR 25.

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

§ 47-35-2. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL.

2.1 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.

2.1.1 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 and 279 with the exceptions, modifications and additions set forth in this section.

2.1.1.a "Major facility" means a disposal or treatment facility which disposes or treats an amount of hazardous waste exceeding or equal to one thousand (1000) tons during a calendar year, and any storage facility having a storage capacity for one thousand (1000) tons of hazardous waste or more.

2.1.1.b "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.

2.1.1.c "Small Quantity Generator" has the meaning set forth at 3.2.1.a.A of this rule.

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

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

2.4 Petitions for Waste Exclusions.

2.4.1 Persons desiring to exclude as waste at a particular generating facility from the lists set forth in 40 CFR part 261 may petition the chief for such an exclusion after having received approval from the Administrator of the Environmental Protection Agency. The petition shall include:

2.4.1.a A copy of the petition submitted to the Administrator of the Environmental Protection Agency pursuant to 40 CFR § 260.22, including all demonstration information;

2.4.1.b A copy of the Administrator's approval granting the exclusion pursuant to 40 CFR § 260.20(d); and

2.4.1.c Any other additional information which may be required for the chief to evaluate the petition.

2.4.2 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.

2.4.3 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.

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

3.1 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.

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

3.1.1.a 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), (B), or (C)~~. A time schedule for the

installation of such groundwater monitoring must be included. This requirement does not apply to wastewater treatment units or containers.

3.1.1.b 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) ~~(A), (B), or (C)~~ shall notify the chief of the receipt of such wastes on a form prescribed by the chief.

3.1.1.c 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 are excepted from incorporation by reference and in lieu thereof the language of this Section 3.2 is inserted. All references to 40 CFR § 261.5 and subparagraphs thereof, shall be deemed references to Section 3.2 and the subparagraphs herein, as appropriate. The provisions of this Section 3.2 are the exclusive requirements for small quantity generators and conditionally exempt small quantity generators notwithstanding any provision of the Code of Federal Regulations or these rules to the contrary.

3.2.1 **Special Requirements for Hazardous Waste Generated by Small Quantity Generators and Conditionally Exempt Small Quantity Generators.**

3.2.1.a. **Small Quantity Generators.**

3.2.1.a.A A Small Quantity Generator is a generator of hazardous waste that generates more than 100 kilograms but less than 1000 kilograms of hazardous waste per calendar month.

3.2.1.a.B *Hazardous Waste Determination.* A person who generates wastes must determine if that waste is hazardous and not excluded from regulation by one of the following methods:

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

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

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

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

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

3.2.1.a.D The Small Quantity Generator may accumulate hazardous waste on site for 180 days unless the distance that waste must be shipped for proper treatment, storage or disposal is more than 200 miles in which case the generator may accumulate hazardous waste on site for 270 days provided that the quantity of waste accumulated on site does not exceed 6,000 kilograms. If a Small Quantity Generator treats (Other than by elementary neutralization or other excluded methods), accumulates or stores for longer than the time frames set forth in Section 3.2.1.a.E or disposes of hazardous waste on site, the small quantity generator becomes subject to the expanded requirements of 40 CFR Parts 263, 264, 265, 266, 268 and 270 as well as any other applicable parts.

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

3.2.1.a.E Containers. The Small Quantity Generator must store hazardous waste in containers or tanks that must meet the following requirements. The Small Quantity Generator may accumulate and store hazardous waste on site for 180 days from the day it is generated unless the distance that waste must be shipped for proper treatment, storage or disposal is more than 200 miles in which case the small quantity generator may accumulate hazardous waste on site for 270 days provided that the quantity of waste accumulated on site does not exceed 6,000 kilograms.

(a) Containers must be in good condition as defined by Department of Transportation Regulations. If due to unforeseen, temporary and uncontrollable circumstances hazardous waste must remain on site for longer than 180 or 270 days, an extension of up to 30 days may be granted by the chief.

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

~~(c) Containers must be handled in a way which will not cause them to rupture or leak.~~

~~(d) The owner or operator of a Small Quantity Generator facility must inspect hazardous waste container storage areas at least weekly for leaks and/or deterioration and must remediate these conditions, upon detection.~~

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

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

3.2.1.a.F. Containers. The Small Quantity Generator must accumulate and store hazardous waste in containers or tanks that must meet the following requirements in order to be eligible for the reduced requirements of this section.

(a) Containers must be kept in good condition as defined by the United States Department of Transportation Regulations.

(b) Containers must be kept closed except when addition adding or removing waste.

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

(d) The owner or operator of a Small Quantity Generator facility must inspect hazardous waste container storage areas at least weekly for leaks and/or deterioration and must remediate these conditions, upon detection.

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

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

~~3.2.1.a.F Tanks. Small Quantity Generators who store hazardous waste in tanks must comply with 40 CFR § 265.201.~~

3.2.1.a.FG Tanks. Small Quantity Generators who accumulate or store hazardous waste in tanks must comply with 40 CFR § 265.201 in order to be eligible for the reduced requirements of this section.

3.2.1.a.EH If a Small Quantity Generator closes (permanently removes from service) a container or tank storage area, 40 CFR § 265.114 must be followed to insure that no contamination exists or remains at the storage location.

3.2.1.a.HI Labeling. Containers and Tanks accumulating or storing hazardous waste must comply with the following labeling requirements:

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

(b) Each container and tank must be clearly labeled or marked with the words "Hazardous Waste" while in use on site.

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

(a) The type of waste and frequency of shipments are specified in the agreement;

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

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

3.2.1.a.IK Record Keeping. The Small Quantity Generator must comply with the following record keeping requirements:

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

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

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

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

(e) The chief, as he deems necessary, may require generators to furnish additional reports concerning the quantities and disposition of hazardous wastes.

3.2.1.a.KL Preparedness and prevention.

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

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

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

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

(iii) Portable fire extinguishers, fire control equipment (including special extinguishing equipment), spill control equipment and decontamination equipment.

(iv) Water at adequate volumes and pressure to supply water hose streams, or foam producing equipment or automatic sprinklers or water spray systems.

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

(c) Whenever hazardous waste is being handled all personnel involved in the operation must have immediate access to an internal alarm or an emergency communication device, either directly or through visual or voice contact with another unless such a device is not required by Section 3.2.1.a ~~K-L~~.(a) (ii) of these rules. If there is just one employee on the premises while the facility is operating, that employee must have immediate access to a device referenced by Section 3.2.1.a ~~K-L~~.(a) of these rules.

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

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

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

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

(iii) ~~Agreements~~ Arrangements with State emergency response teams, emergency response contractors and equipment suppliers.

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

(f) Where State or local authorities decline to enter into such ~~agreements~~ arrangements, the owner or operator must document the refusal in the operating record.

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

(h) The following information must be posted next to the telephone:

(i) The name and telephone number of the emergency coordinator.

(ii) The location of fire extinguishers and spill control equipment and, if present, the fire alarm.

(iii) The telephone number of the fire department unless the facility has a direct alarm.

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

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

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

(i) The name, address and EPA identification number of the generator.

(ii) The date, time and type of incident.

(iii) Type and quantity of hazardous waste involved in the incident.

(iv) Extent of injuries, if any.

(v) Estimated quantity and disposition of recovered materials, if any.

~~3.2.1.a.L If a Small Quantity Generator treats (other than elementary neutralization or other excluded methods), stores for longer than the time frames set forth in Section 3.2.1.a.D or disposes of hazardous waste on site, the generator becomes subject to the permitting requirements of 40 CFR part 265, part 270 and all other applicable parts.~~

3.2.1.a.L-M If a Small Quantity Generator either exports or imports hazardous waste out of or into the United States of America, he must comply with Subparts E and F or 40 CFR Part 262 respectively.

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

3.2.1.a.N O If a Small Quantity Generator does not meet all the requirements set forth herein, the reduced requirements do not apply and the generator will be subject to full regulation.

3.2.1.b Conditionally Exempt Small Quantity Generators.

3.2.1.b.A A Conditionally Exempt Small Quantity Generator is a generator of hazardous waste that produces no more than 100 kilograms of hazardous waste per calendar month or no more than one (1) kilogram of acute hazardous waste and that meets the requirements stipulated below.

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

3.2.1.b.B The Conditionally Exempt Small Quantity Generator must make a proper hazardous waste determination as specified in Section 3.2.1.a.B of these rules. When determining

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

3.2.1.b.C The Conditionally Exempt Small Quantity Generator must notify the chief of its hazardous waste generation activity. No generator shall treat, store or dispose of, transport or offer for transportation hazardous waste without having received an EPA identification number.

3.2.1.b.D A Conditionally Exempt Small Quantity Generator may accumulate up to 1000 kilograms of hazardous waste on site before becoming subject to the requirements of Sections 3.2.1.a.D and ~~3.2.1.a.H~~ of these rules with the exception that:

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

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

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

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

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

(c) Beneficially uses or re-uses or legitimately recycles or reclaims the waste; or,

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

3.2.1.b.G Hazardous waste subject to the reduced requirements of Section 3.2.1.b may be mixed with non-hazardous waste and remain subject to the reduced requirements even though the resultant mixture exceeds the quantity limitations in Section 3.2.1.b.D of these rules unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR part 261 with the following modifications:

(a) If any person mixes a waste with a hazardous waste that exceeds a quantity exclusion level of Section 3.2.1.b.D of these rules, the mixture is subject to full regulations.

(b) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR part ~~266~~ 279., ~~subpart E if it is designated to be burned for energy recovery. Any material produced from such a mixture by processing, blending or other treatment is also so regulated if it is destined to be burned for energy recovery.~~

3.2.1.b.H If a Conditionally Exempt Small Quantity Generator does not meet all of the requirements set forth herein, the exemption does not apply and the generator will be subject to full regulation.

§ 47-35-4. NOTIFICATION OF HAZARDOUS WASTE ACTIVITY REGULATIONS.

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

4.1.1 Any person as described in Section 4.1 of these rules that has notified the EPA or is subject to the requirements to notify EPA as specified in Volume 45, Number 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754, is subject to the provision of Section 4 of these rules.

4.1.2 The purpose of Section 4 of these rules 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 Section 4.1.1 of these rules or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in Section 4.1.1 of these rules to notify the chief of their hazardous waste activities.

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

4.2.1 Any person involved in hazardous waste activities that did not comply with the notification requirements of EPA, as referenced above in Section 4.1 of the rules, but is subject to those requirements shall notify the chief in writing of his hazardous waste activities within thirty (30) days of the effective date of these rules. 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.

4.2.2 Any person exempted from the federal notification requirements but subject to West Virginia notification requirements as specified in 40 CFR §§ 261.6(b) and 261.5 shall notify the chief in writing of his hazardous waste activities within ninety (90) days of the effective date of these rules or the date of initiation of such activities, whichever is later. Notification may be accomplished by use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

4.2.3 One notification form is required for each generator.

4.2.4 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.

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

4.2.6 New generators and those initiating activities subsequent to the EPA notification period referenced in Section 4.1.1 of these rules shall comply with the EPA identification number requirements and shall provide a copy of their application for an EPA identification number to the Administrator.

§ 47-35-5. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

5.1 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 The provisions of 40 CFR § 262.10(e) shall be excepted from incorporation.

5.2.1 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 does not comply with the requirements of this rule. This rule is no way abrogates the enforcement authority of the Resource Conservation and Recovery Act of 1976 § 3008.

5.2.2 All references to 40 CFR § 262.10(e) shall be deemed references to Section 5.2 and the subparagraphs herein, as appropriate.

5.3 The provisions of 40 CFR part 262, subpart E -- Exports of Hazardous Waste are excepted from incorporation by reference and shall remain the prove named of the Environmental Protection Agency and in addition to the requirements contained therein, any person subject to the provisions of subpart E shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by and within the timeframes set forth in subpart E.

5.4 The provisions of 40 CFR part 262, subpart F -- Imports of Hazardous Waste are excepted from incorporation by reference and in addition to the requirements contained therein, any person subject to the provisions of subpart F shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by and within the timeframes set forth in subpart F.

5.5 All references to and requirements of Small Quantity Generators including but not limited to those at 40 CFR Parts 262.11, 262.20(e), 262.34(d), 262.34(e), 262.34(f), and 262.44 shall be deemed are intended to be references to Section 3.2.1 and the subparagraphs herein, as appropriate. Section 3.2.1 is not intended to limit the access of Small Quantity Generators to any

Sections of the federal regulations which may have an impact upon their operations.

§ 47-35-6. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

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

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

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

7.1 The standards in Section 7 of these regulations apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste except as otherwise provided by law. In addition to the standards in Section 7 of these rules, the rules of the Air Quality Board, 45 CSR 25, apply to management facilities which may emit hazardous waste or the constituents thereof to the atmosphere including incineration facilities except as otherwise provided by law. For purposes of Section 7 of these rules, the following persons are considered to be incinerating hazardous waste:

7.1.1 Owners or operators of hazardous waste incinerators; and

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

7.2 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 The provisions of 40 CFR part 264.12(a) are retained by the Environmental Protection Agency; however, the Chief of the Office of Waste Management must receive identical notification.

7.3.4. 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.

7.34.1 For purposes of 40 CFR § 264.92, reference to the "Regional Administrator" shall be to the "Environmental Quality Board." The Environmental Quality Board establishes ground-water protection standards pursuant to the authority granted the Board in W. Va. Code, § 22-12-4.

7.34.2 For purposes of 40 CFR § 264.94 and subparagraphs thereof, the Environmental Quality Board rule on Groundwater Protection Standards, 46 CSR 12 and the subparagraphs therein, shall apply as required except as noted below pursuant to the authority granted the Environmental Quality Board in W. Va. Code, § 22-12-4.

7.4.2.a For the purposes of 40 CFR Part 264.94(a)(1), the Groundwater Protection Standards at 46 CSR 7 shall apply.

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

7.34.3.a 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.

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

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

7.56 The provisions of 40 CFR §§ 264.343, 264.344, 264.345 and 264.347 relating to incinerators are excepted from incorporation by reference. Consult the regulations of the Air Quality Board regarding emissions from incinerators.

7.56.1 Consult the Air Quality Board regulations, 45 CSR 25, Regulations to Prevent & Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities.

7.67 The provisions of 40 CFR part 264, subparts AA and BB, and CC are excepted from incorporation by reference. Consult the regulations of the Air Quality Board regarding emissions from incinerators.

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

8.1 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 The provisions of 40 CFR §§ 265.12(a), 265.149, and 265.150 are excepted from incorporation by reference.

~~8.3 The provisions of 40 CFR part 265, subpart J -- Tank Systems are adopted and incorporated by reference with the following modification:~~

~~8.3.1 The provisions of 40 CFR § 265.193(a)(4) is excepted from incorporation by reference and in lieu thereof the following language shall be inserted:~~

~~"(4) For those existing tank systems for which the age cannot be documented, within eight years of April 1, 1988, but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of April 1, 1988, whichever comes later; and"~~

8.4 ~~3~~ The provisions of 40 CFR § § 265.345, 265.347 and 265.352 relating to incinerators are excepted from incorporation by reference. Consult the rules of the Air Quality Board regarding emissions from incinerators.

8.54 The provisions of 40 CFR part 265, subpart P -- Thermal Treatment are incorporated by reference except for 40 CFR § 265.383 which is excepted from incorporation by reference. Consult the rules of the Air Quality Board regarding emissions from thermal treatment units.

8.65 The provisions of 40 CFR part 265, subparts AA, and BB, and CC are excepted from incorporation by reference. Consult the rules of the Air Quality Board regarding air emission standards for process vents and air emissions standards for equipment leaks.

§ 47-35-9. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

9.1 The provisions of 40 CFR part 266 are hereby adopted and incorporated by reference. Consult the Rules of the Air Quality Board regarding Subpart H of this part.

~~§ 47-35-10. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF NEW HAZARDOUS WASTE LAND DISPOSAL FACILITIES.~~

~~10.1 The provisions of 40 CFR part 267 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.~~

~~10.2 The provisions of 40 CFR part 267, subpart C -- Underground Injection are excepted to the extent the rules set forth therein conflict or are inconsistent with the provisions of West Virginia Water Resources Board, Underground Injection Control 46 CSR 9.~~

§ 47-35-~~11~~10. LAND DISPOSAL RESTRICTIONS.

~~11~~10.1 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 The provisions of 40 CFR §§ 268.5, 268.6, 268.10, 268.11, 268.12, 268.13, 268.42(b) and 268.44 and excepted from incorporation by reference.

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

§ 47-35-~~12~~11. THE HAZARDOUS WASTE PERMIT PROGRAM.

~~12~~11.1 The provisions of 40 CFR part 270 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

~~12~~11.2 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 permit in West Virginia. All references in 40 CFR Part 124 to 40 CFR Part 270 shall be deemed to be references to the

applicable provisions of Sections ~~10.2.211.4~~ through ~~10.2.911.14~~ of this rule. To the extent of any inconsistency with 40 CFR part 270, the specific provisions contained herein shall control.

~~10.1.3~~ 11.3 The term "major facility" shall have the meaning given at Section 2.1.1.a of this rule.

~~12.2.1~~ 11.4 Application Fees.

~~12.2.1.a~~ 11.4.1 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.

~~12.2.1.b~~ 11.4.2 Such fee shall be determined by the schedule set forth in Table I of these rules.

~~12.2.1.c~~ 11.4.3 The chief reserves his right to promulgate rules establishing a permit renewal fee at a later date.

~~12.2.2~~ 11.5 Draft Permits.

~~12.2.2.a~~ 11.5.1 Once an application is complete, the chief shall tentatively decide whether to prepare a draft permit or to deny the application.

~~12.2.2.b~~ 11.5.2 If the chief decides to prepare a draft permit, a draft permit shall be prepared that contains the following information:

~~12.2.2.b.A~~ 11.5.2.a All conditions under 40 CFR §§ 270.30 and 270.32;

~~12.2.2.b.B~~ 11.5.2.b All compliance schedules under 40 CFR § 270.33;

~~12.2.2.b.C~~ 11.5.2.c All monitoring requirements under 40 CFR § 270.31; and

~~12.2.2.b.D~~ 11.5.2.d Standards for treatment, storage, and disposal and other permit conditions under 40 CFR part 270.

~~12.2.2.e~~ 11.5.3 A fact sheet prepared in accordance with Section ~~12.2.3~~ 11.6 of these rules shall accompany the draft permit.

~~11.2.2.d~~ 11.5.4 Any additional information considered to be necessary or proper.

~~12.2.3~~ 11.6 **Fact Sheet.**

~~12.2.3.a~~ 11.6.1 A fact sheet shall be prepared by the chief for every draft permit for each hazardous waste management facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The chief shall send this fact sheet to the applicant and, upon request, to any other person.

~~12.2.3.b~~ 11.6.2 The fact sheet shall include, when applicable:

~~12.2.3.b.A~~ 11.6.2.a A brief description of the type of facility or activity which is the subject of the draft permit;

~~12.2.3.b.B~~ 11.6.2.b The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged. A description of the type of wastes, fluids, or pollutants shall include, but not limited to, the characteristics of the waste materials and the potential effects on public health and the environment;

~~12.02.3.b.C~~ 11.6.2.c A brief summary of the basis for the draft permit conditions including references to applicable statutory or rule provisions;

~~12.2.3.b.D~~ 11.6.2.d Reasons why any requested variances or alternatives to required standards do or do not appear justified;

~~12.2.3.b.E~~ 11.6.2.e A description of the procedures for reaching a final decision on the draft permit including:

(a) The beginning and ending dates of the comment period and the address where comments will be received;

(b) Procedures for requesting a hearing and the nature of that hearing; and

(c) Any other procedures by which the public may participate in the final decision; and

~~12.2.3.b.F~~ 11.6.2.f Name and telephone number of a person to contact for additional information.

~~12.2.4~~ 11.7 Public Access to Information.

~~12.2.4.a~~ 11.7.1 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.

~~12.2.4.b~~ 11.7.2 It shall be the responsibility of the person claiming any information as confidential under the provisions of Section ~~12.2.4~~ 11.7 of these rules 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.

~~12.2.4.c~~ 11.7.3 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.

~~12.2.4.d~~ 11.7.4 No information shall be protected as confidential information by the chief unless it is submitted in accordance with the provisions of Section ~~12.2.4.c~~ 11.7.3 of these rules and no information which is submitted in accordance with the provisions of Section ~~12.2.4.c~~ 11.7.3 of these rules 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.

~~12.2.4.e~~ 11.7.5 All information which meets the tests of Section ~~12.2.4.d~~ 11.7.4 of these rules 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 Section ~~12.2.4.e~~ 11.7.4 of these rules, the chief shall mark the information "REJECTED" and promptly return such information to the person submitting such information.

~~12.2.4.f~~ 11.7.6 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.

~~12.2.4.g~~ 11.7.7 Nothing in Section ~~12.2.4~~ 11.7 of these rules 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 Section ~~12.2.4~~ 11.7 of these rules.

~~12.2.4.h~~ 11.7.8 Persons interested in obtaining information pursuant to Section ~~12.2.4~~ 11.7 of these rules should submit a request in accordance with Title 46, Water Resources Board, Series 8 (46 C.S.R. 8).

~~12.2.4.i~~ 11.7.9 Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

~~12.2.5~~ 11.8 **Public Participation in Permit Process.**

~~12.2.5.a~~ 11.8.1 Scope. Public notice shall be given that the following actions have occurred:

~~12.2.5.a.A~~ 11.8.1.a A draft permit has been prepared; or

~~12.2.5.a.B~~ 11.8.1.b A hearing has been scheduled.

~~12.2.5.b~~ 11.8.2 Timing.

~~12.2.5.b.A~~ 11.8.2.a Public notice of the preparation of a draft permit required under Section ~~12.2.5~~ 11.8 of

these rules shall allow at least forty-five (45) days for public comment.

~~12.2.5.b.B~~ 11.8.2.b Public notice of a public hearing shall be given at least thirty (30) days before the hearing.

~~12.2.5.e~~ 11.8.3 Methods. Public notice of activities described in Section ~~12.2.5~~ 11.8 of these rules shall be given by the following methods:

~~12.2.5.e.A~~ 11.8.4 By mailing a copy of the notice to the following persons:

- (a) The applicant;
- (b) Any federal or state agency which the chief knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the facility or activity including, but not limited to, the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers;
- (c) Each State agency having authority under State law with responsibility to the construction or operation of such facility;
- (d) Any unit of local government having jurisdiction over the area where the facility is proposed to be located;
- (e) Other appropriate federal or State agencies including, but not limited to, the U.S. Fish and Wildlife Service, the U.S. Forest Service, the West Virginia Department of Culture and History, the West Virginia Department of Health, other governmental authorities including any affected states, and the Advisory Council on Historic Preservation (Suite 430, 1522 K Street, N.W., Washington, D.C. 20005); and

(f) All persons to whom a public notice is sent;

~~(g)~~ Persons on the mailing list developed by:

(i) Including those who request in writing to be on the list.

(ii) Soliciting persons for "area lists" from participants in past permit proceedings in that area.

(iii) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public

press and in appropriate publications of the State. The chief may update the mailing list by requesting written indication of continued interest from those listed. The chief may delete from the list the name of any person who fails to respond to such a request.

(gh) By publishing the public notice, in the form of a Class I legal advertisement in a qualified daily or weekly newspaper of general circulation and broadcasting the public notice over local radio stations in the area in which the facility is or is proposed to be located. A qualified daily or weekly newspaper is, for the purpose of Section ~~12.2.5~~ 11.8 of these rules, any newspaper which meets the provisions of W. Va. Code, § 59-3-1(b).

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

(ij) Any person otherwise entitled to receive notice under Section ~~12.2.5~~ 11.8 of these rules may waive the right to receive notice for any classes and categories of permits.

~~12.2.5.d~~ 11.9 Personal Notification by Facility Owner or Operator to Individual Residents.

~~12.2.5.d.A~~ 11.9.1 Following the submittal of a Part B application which is deemed complete by the chief, and before the public notice of the preparation of a draft permit as required under Section ~~12.2.5.a~~ 11.8 of these rules, the facility owner or operator shall serve notice upon the residence of all persons residing within one-quarter mile of the boundaries of the specific hazardous waste management facility.

~~12.2.5.d.B~~ 11.9.2 Service of such notice as herein provided shall be made by delivering a copy to the residence of each person upon whom service must be made or by mailing it by registered mail to the last known address of each person or by such other reasonable means as the chief and the owner or operator agree will provide an effective and practical method of notification.

~~12.2.5.d.C~~ 11.9.3 Following completion of service of notice as set forth herein, and no later than the date of public notice required in Section ~~12.2.5.a~~ 11.8 of these rules, the owner or operator shall certify in writing to the chief that service has been completed, describe the method of service, and provide a copy of the written notice employed to the chief.

~~12.2.5.d.D~~ 11.9.4 The personal notice required herein shall be a written notice containing at a minimum:

- (a) The name and address of the permit applicant;
- (b) The name, location, and type of hazardous waste management facility for which the application has been submitted;
- (c) A statement advising the recipients of the notice that a complete application for permit has been submitted; and
- (d) A statement advising the notice recipients that an opportunity for public comment upon the application and draft permit will be made available to them upon completion of division review of the application and that such notice will be published as a legal advertisement in a local newspaper and broadcast over the radio.

~~12.2.5.e~~ 11.10 Contents.

~~12.2.5.e.A~~ 11.10.1 All public notices issued under Section ~~12.2.5.11.8~~ of these rules shall contain the following information:

- (a) Name and address of the office processing the permit action for which notice is being given;
- (b) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
- (c) A brief description of the business conducted at the facility described in the permit application or the draft permit;
- (d) The name, address, and telephone number of a person from whom interested persons may obtain further information including copies of the draft permit or fact sheet, and the application; and
- (e) A brief description of the comment procedures required by Sections ~~12.2.6~~ 11.11 and ~~12.2.7~~ 11.12 of these rules and the time and place of any hearing that will be held, including a statement of procedures to request a hearing unless already scheduled, and other procedures by which the public may participate in the final permit decision.

~~12.2.5.e.B~~ 11.10.2 In addition to the general public notice described in Section ~~12.2.5.e.A~~ 11.10.1 of these

rules, the public notice of a hearing shall contain the following information:

(a) Reference to the date of previous public notices relating to the permit;

(b) Date, time and place of the hearing;

(c) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

(d) Name and address of the nearest district office where the file will be available for inspection.

~~12.2.6~~ 11.11 **Public Comment and Request for Public Hearings.** During the public comment period provided that any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Sections ~~12.2.8~~ 11.13 and ~~12.2.9~~ 11.14 of these rules.

~~12.2.7~~ 11.12 **Public Hearings.**

~~12.2.7.a~~ 11.12.1 The chief shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in a draft permit(s). The chief may also hold a public hearing at his discretion whenever, for instance, such hearing may clarify one or more issues involved in the permit decision.

~~12.2.7.b~~ 11.12.2 The chief shall hold a public hearing upon receiving written notice of opposition to a draft permit and a request for public hearing within forty-five (45) days of the public notice. Whenever possible the chief shall schedule a hearing under Section ~~12.2.7~~ 11.12 of these rules at a location convenient to the nearest such proposed facility. Public notice of the hearing shall be given as specified in Section ~~12.2.5~~ 11.8 of these rules.

~~12.2.8~~ 11.13 **Reopening of the Public Comment Period.**

~~12.2.8.a~~ 11.13.1 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:

~~12.2.8.a.A~~ 11.13.1.a Prepare a new draft permit, appropriately modified, under Section ~~12.2~~ 11.5 of these rules.

~~12.2.8.a.B~~ 11.13.1.b Prepare a revised fact sheet under Section ~~12.2~~ 11.6 of these rules and reopen the comment period.

~~12.2.8.a.C~~ 11.13.1.c Reopen or extend the comment period under Section ~~12.2~~ 11.11 of these rules to give interested persons an opportunity to comment on the information or arguments submitted.

~~12.8.b~~ 11.13.2 Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section ~~12.2~~ 11.8 of these rules shall define the scope of the reopening.

~~12.2.9~~ 11.14 Response to Comments.

~~12.2.9.a~~ 11.14.1 At the time that any final permit is issued, the chief shall issue a response to comments. This response shall be in writing and shall:

~~12.2.9.a.A~~ 11.14.1.a Specify which provisions, if any, of the draft permit have been changed in the final permit and the reasons for change; and

~~12.2.9.a.B~~ 11.14.1.b Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or hearing.

~~12.2.9.b~~ 11.14.2 The response to comments shall be delivered to any person who commented or any person who requests the same.

~~12.3~~ 11.15 The provisions of 40 CFR § 270.12 are excepted from incorporation by reference. Availability of information provided under these rules is controlled by the provisions of W. Va. Code, § 22-18-12 and section ~~12.2.4~~ 11.7 of these rules.

~~12.4~~ 11.16 The provisions of 40 CFR § 270.24 are excepted from incorporation by reference. Consult the rules of the Air Quality Board regarding emissions from process vents.

~~12.5~~ 11.17 The provision of 40 CFR §§ 270.60(b) and 270.64 are excepted from incorporation by reference. Consult the rules of the Office of Water Resources and the Environmental Quality Board regarding the requirements for underground injection wells.

~~§ 47-35-12431.~~ DEED AND LEASE DISCLOSURE; NOTICE IN DEED TO PROPERTY.

~~1243.1~~ 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:

~~1243.1.1~~ The land has been used to manage hazardous wastes; and

~~1243.1.2~~ Its use is restricted under 40 CFR § 264.117(c).

~~1243.2~~ 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.

~~1243.3~~ Other Requirements. Nothing contained in this Section ~~13~~ of these rules shall relieve any person from complying with the requirements on deed and lease disclosures set forth in W. Va. Code, § 22-18-21.

~~§ 47-35-1314~~ STANDARDS FOR THE MANAGEMENT OF USED OIL.

~~1314.1~~ The provisions of 40 CFR part 279 are hereby adopted and incorporated by reference with the exception contained in this section.

~~1314.2~~ The term EPA at 40 CFR part 279.82(b) shall have the meaning of United States Environmental Protection Agency.

~~1314.3~~ Notwithstanding the effective date of this rule, the effective date of the provisions of this Section 13 shall be July 1, 1995.

~~§ 47-35-153.~~ MISCELLANEOUS PROVISIONS.

~~153.1~~ ~~The provisions set forth in Appendix 1 are incorporated as a part of these rules.~~

**TABLE 1
PERMIT APPLICATION FEE SCHEDULE**

STORAGE

EPA CODE ACTIVITY	FEE	FEE
S01 <u>Drum Container</u>	<100 tons capacity \$1,000.00 <u>\$5,000.00</u>	≥100 tons capacity \$3,000.00 <u>\$7,500.00</u>
S02 Tank	<100 tons capacity \$1,000.00 <u>\$5,000.00</u>	≥100 tons capacity \$3,000.00 <u>\$7,500.00</u>
S04 Surface Impoundment	<1,000 tons capacity \$2,500.00 <u>\$20,000.00</u>	≥1,000 tons capacity \$3,000.00 <u>\$25,000.00</u>
<u>S05 Drip Pad</u>	<u>\$5,000.00</u>	
S03 Waste Pile	<100 tons capacity \$1,500.00 <u>\$10,000.00</u>	≥100 tons capacity \$3,000.00 <u>\$15,000.00</u>
-	-	-
<u>S06 Waste Pile/ (Containment Bldg.)</u>	<100 tons capacity <u>\$10,000.00</u>	≥100 tons capacity <u>\$15,000.00</u>

DISPOSAL

EPA CODE ACTIVITY	FEE	FEE
D80 Landfill	<1,000 tons/year \$2,500.00 <u>\$30,000.00</u>	≥1,000 tons/year \$5,000.00 <u>\$50,000.00</u>
D81 Land Application	<1,000 tons/year \$2,500.00 <u>\$30,000.00</u>	≥1,000 tons/year \$5,000.00 <u>\$50,000.00</u>
D83 Surface Impoundment	<1,000 tons/year \$2,500.00 <u>\$30,000.00</u>	≥1,000 tons/year \$5,000.00 <u>\$50,000.00</u>

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

TREATMENT

EPA CODE ACTIVITY	FEE	FEE
T01 Tank	<100 tons capacity <u>\$1,000.00</u> <u>\$5,000.00</u>	≥100 tons capacity <u>\$3,000.00</u> <u>\$7,500.00</u>
T02 Surface Impoundment	<1,000 tons/year <u>\$2,500.00</u> <u>\$20,000.00</u>	≥1,000 tons/year <u>\$3,000.00</u> <u>\$25,000.00</u>
T03 Incinerator	<1,000 tons/year <u>\$1,000.00</u> <u>\$10,000.00</u>	≥1,000 tons/year <u>\$3,000.00</u> <u>\$15,000.00</u>
T80 thru T93 Boiler/Industrial Furnace	<1,000 tons/year <u>\$10,000.00</u>	≥1,000 tons/year <u>\$15,000.00</u>
T04 Other	(Reserved) <u>\$10,000.00</u>	(Reserved) <u>\$15,000.00</u>
T-94 Containment Bldg. Treatment	<u>\$10,000.00</u>	<u>\$15,000.00</u>

EMERGENCY PERMITS

EPA CODE ACTIVITY	FEE
State and Federal	<u>Nil</u>
Others	<u>\$1,000.00</u>

MISCELLANEOUS

EPA CODE ACTIVITY	FEE
Permit Modification under 40 CFR. 270.42 (Class I, II, III)	<u>\$2,500.00</u>
Modification under 40 CFR. 270.41	<u>\$5,000.00</u>
Post-Closure Care Permit	<u>\$30,000.00</u>
Closure Plans	<u>\$3,000.00</u>

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION
WATER RESOURCES - SOLID WASTE MANAGEMENT
TITLE 47, SERIES 35
HAZARDOUS WASTE MANAGEMENT REGULATIONS

PUBLIC HEARING
JULY 24, 1995

A verbatim transcript of the public hearing will not be provided because there were no comments received during the hearing.

Only Robert Foster, who represented the West Virginia Manufacturers Association attended the hearing. He read a statement that mirrored the West Virginia Manufacturers Association's written comment that opposed the proposed permit fee increase.

Appalachian Power Company
PO Box 2021
Roanoke, VA 24022-2121
703 985 2300



RECEIVED

JUL 25 1995

DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
COMPLIANCE MONITORING & ENFORCEMENT

West Virginia Division of Environmental Protection
Office of Waste Management
1356 Hansford Street
Charleston, WV 25301
Attn: Mr. Mike Dorsey

Re: Comments of American Electric Power and
Affiliated Power Companies
Proposed 47 CSR 35 - Hazardous Waste Management Regulations

July 24, 1995

Dear Mr. Dorsey:

On behalf of American Electric Power Service Corporation, Appalachian Power Company, Columbus Southern Power/Ohio Power Companies, and Wheeling Power Company, I offer the attached comment on the West Virginia Division of Environmental Protection's proposed Hazardous Waste Management Regulations. I would like to offer our appreciation for the opportunity to submit this comment and look forward to a continued good working relationship between our companies and the DEP.

If you have any questions concerning our comment, please contact Mr. James Lovell of my staff at (540) 985-2429.

Sincerely,

A handwritten signature in cursive script that reads 'Robert J. Robinson'.

Robert J. Robinson
Environmental Affairs Director

Attachment

**Comments of American Electric Power on
the Proposed" Hazardous Waste Management Regulations"
47 CSR 35**

Introduction:

The American Electric Power family of companies (which include American Electric Power Service Corporation, Appalachian Power Company, Columbus Southern Power/Ohio Power Companies, and Wheeling Power Company) present the following comment to the proposed Hazardous Waste Management Regulations (47 CSR 35) of the West Virginia Division of Environmental Protection.

Section 3.2.1.b.F (b) of the proposed Hazardous Waste Regulations is more stringent than the federal regulations in that it restricts the disposal Conditionally Exempt Small Quantity Generator waste. Thereby, the Company requests WVDEP to amend Section 3.2.1.b.F (b) as follows:

"Is permitted, licensed or registered by a state to manage municipal or industrial solid waste;

JACKSON & KELLY

ATTORNEYS AT LAW

1600 LAIDLEY TOWER

P. O. BOX 553

CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000

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WRITER'S DIRECT DIAL NO.

340-1355

July 25, 1995

175 EAST MAIN STREET
LEXINGTON, KENTUCKY 40505
TELEPHONE 606-256-6500

203 WEST MAIN STREET
CLARKSBURG, WEST VIRGINIA 26301
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WASHINGTON, D.C. 20037
TELEPHONE 202-973-0200

1660 LINCOLN STREET
DENVER, COLORADO 80264
TELEPHONE 303-337-0008

RECEIVED

JUL 25 1995

DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
COMPLIANCE MONITORING & ENFORCEMENT

H. Michael Dorsey, Assistant Chief
West Virginia Division of
Environmental Protection
1356 Hansford Street
Charleston, WV 25301

Re: Union Carbide Corporation Comments on the
June 23, 1995 Proposed Amendments to the
West Virginia Hazardous Waste Management
Regulations (47 CSR 35)

Dear Mr. Dorsey:

Please find enclosed the Comments of Union Carbide Corporation on the June 23, 1995 Proposed Amendments to the West Virginia Hazardous Waste Management Regulations (47 CSR 35).

Sincerely,

Barbara D. Little /ys

BARBARA D. LITTLE

AEE050F4

Enclosure

**COMMENTS OF UNION CARBIDE CORPORATION
ON THE JUNE 23, 1995 PROPOSED AMENDMENTS TO THE
WEST VIRGINIA HAZARDOUS WASTE MANAGEMENT REGULATIONS**

On June 23, 1995, the West Virginia Department of Environmental Protection ("DEP") proposed amendments to its Hazardous Waste Management Regulations ("HWMR") 47 CSR 35. The comment period on these proposed amendments extends through Tuesday, July 25, 1995, including a public hearing to be held on July 24, 1995.

Union Carbide Corporation appreciates the opportunity to comment upon the June 23, 1995 proposed amendments to the HWMR, which revisit a regulation which was promulgated as a final rule by the DEP (at the time, the Department of Natural Resources) on April 1, 1988, with the amendment of §8.6.4.c. This amendment was an addendum to §8.6.4.b., the provision which required the completion of closure activities within 180 days after receipt of the final volume of "hazardous waste," rather than "waste," to conform to the May 2, 1986 U.S. EPA amendment to 40 C.F.R. §265.113. This provision is commonly known as the "time for closure" rule.

It was determined by the DEP in 1987 that the adoption of the amendment to §8.6.4.b. to be identical to 40 C.F.R. §§264.113 and 265.113, would have the unintended effect of depriving both Union Carbide and the City of South Charleston of the continued use of an environmentally sound waste management facility - Holz Impoundment.

In promulgating a State hazardous waste management program, the State's program may differ from the federal program so long as the State program, taken as a whole, is not less stringent

than the federal RCRA program. The DEP carefully analyzed a West Virginia HWMR amendment §8.6.4.c. (repromulgated June 1, 1994 as Appendix 1) to §§264.113 and 265.113, which would provide stringent protection to the federal provision while accommodating the continued utilization of the Holz Impoundment for the receipt of non-hazardous waste. Indeed, the West Virginia Hazardous Waste Management Permit No. WVD980554885 was issued on the basis of the revised §8.6.4.c. (repromulgated in 1994 as Appendix 1) to allow the continued operation of Holz for the receipt of non-hazardous waste. The permit does govern the operation of Holz during its term (until November 8, 1998) regardless of regulatory changes.

DEP's stated rationale for the June 23, 1995 proposed deletion of Appendix 1 is that "...one section that did not meet the stringency requirements of U.S. EPA." However, in the regulatory preamble (attached hereto and incorporated herein) to the 1987 rule, DEP persuasively argues that the State's regulatory scenario as set forth in the 1987 §8.6.4.c. (repromulgated in 1994 as Appendix 1, without substantive change) is as stringent as the federal EPA's requirements:

"We (the DEP) believe that these conditions implement provisions that are equivalent to and no less stringent than the EPA's requirements for the closure of a hazardous waste surface impoundment" (p. 9 Regulatory Preamble to 1987 HWMA).

Moreover, the West Virginia addendum to the "time for closure" rule has been part of the HWMR for **eight (8)** years. Considering all of the extensive federal review of the West

Virginia HWMR program, any objection of the EPA at this late date is arbitrary and capricious. Indeed, given that this regulation was included in the second "RCRA Cluster" following the base program approval in 1986, EPA would have already approved §8.6.4.c.¹

Otherwise, the 1987 comments of UCC (enclosed herewith and incorporated herein) justifying the continued operation of Holz remain the same excepting that the operating history of Holz over the past eight years further bolsters the argument that Holz is an environmentally sound waste management facility. The extensive groundwater monitoring documented over the past eight years has shown no exceedences, and indeed no detection of the permitted groundwater parameters.

¹If EPA has not authorized any West Virginia HWMR beyond the May 1986 base program, then the majority of the West Virginia hazardous waste management program is not federally enforceable.

The groundwater protection standards of the Water Resources Board are not subject to permitting and licensing by the Board, since the Board does not have permitting authority. Rather these standards are made applicable to TSD facilities through permitting by the Chief. The closure provisions contained in 40 C.F.R. §264.351, however, are different since they pertain to incinerators which are permitted by the WVAPCC (See West Virginia Administrative Regulations, Air Pollution Control Commission, Series 25, Section 24.01). However, the WVAPCC does not review closure plans for the incinerators; the DNR carries out this program function.

Thus, we have adopted the suggestion and, for clarity and completeness, have included a reference to all state provisions paralleling this federal provision.

Section 8.6.3.c.3 Permit Modifications for Closure Plans

One commenter pointed out that the Department misplaced the phrase "waste piles" in the middle of the section and also sought clarifying language concerning submission of an amended closure plan. We have adopted the suggested clarification. The phrase waste pile, however, is correct in this section and we offer the following explanation of its retention.

This section is designed to parallel 40 C.F.R. §264.112(c)(3) which deals with unexpected events impacting on the closures of all TSD facilities. It also contains specific provisions relating to both surface impoundments and waste piles.

Sections 8.6.4.b And 8.6.4.c (Time of Closure)

The proposed regulations add the word "hazardous" to this section so that a facility must close within one hundred and eighty days of the final receipt of hazardous waste rather than one hundred and eighty days after the final receipt of waste. EPA considers this change to be a clarification of an existing regulation rather than a substantive change of any requirement.

Three commenters made suggestions regarding this section. One commenter informed the Department that the change to this provision would severely impact the operation of its publicly owned treatment works (POTW). Currently, this commenter sends sludge from its POTW to a surface impoundment that does not plan to receive hazardous waste after October 30, 1988. Thus, the proposed rule would make it emphatically clear that the surface impoundment could not remain open to receive its non-hazardous sludge.

Another commenter suggested that the DNR delay rulemaking on this issue since the parallel EPA regulatory provision (40 C.F.R. §264.113) is being appealed to the United States Circuit Court of Appeals and settlement negotiations are underway.

Finally, the owner of the surface impoundment impacted by this

regulation urged that the Department allow its facility to remain open to receive wastes by placing specific operating and closure requirements on the facility.

The EPA's rationale for adopting its clarifying rule was based on several points. First, they considered the change to be merely a clarification since the closure rule adopted a two-step process that called for removal or disposal of all hazardous waste from the facility within 90 days after receipt of hazardous waste and compliance with the closure performance standards within 180 days. In essence, the reference made to waste rather than hazardous waste in the 180 day provision was inadvertent and should have been construed to mean hazardous waste. Thus, such clarification was made merely for consistency.

Second, EPA claims that this nonsubstantive change is consistent with the "two-part 'prevention and care' system whose goal is to minimize formation of leachate and migration of leachate to the adjacent subsurface soil, ground water, or surface water."

Under the EPA regulatory scheme the goal of minimizing the formation and migration of leachate is achieved through performance standards for a surface impoundment which include the use of a liner, the removal or solidification of the hazardous waste and the placement of a final cover (cap) on top of the surface impoundment to minimize percolation of liquids such as rainwater into the unit. This cap, in the EPA's opinion, will also: (a) prevent the filling of the unit with leachate and overflowing; (b) protect surface water from runoff, and (c) discourage direct access to the hazardous waste.

Finally, EPA claims that placement of the cap will reduce leachate generation in the case of units which do not contain liners, and that, since even lined units will "eventually leak," the cap is "critical for the long term control of the unit." The EPA also notes that it is often not known whether the unit is leaking until it is detected by groundwater monitoring and, therefore, the cap should be applied as soon as possible.

It is axiomatic that in order for a state to retain authorization, its hazardous waste management program must be consistent, equivalent, and no less stringent than the federal program. Consistency of programs is judged by the provisions of 40 C.F.R. §270.4. Equivalency of the state and federal programs is judged by the state's Attorney General and EPA by comparing specific provisions of the programs. However, no principles have been established concerning how to determine whether a state's program, which adopts provisions similar to the federal requirements, is equivalent to the federal provision.

Deciding whether a state regulatory provision is no less stringent than its federal counterpart is also a judgment made by EPA which does not have any guiding principles except to recognize that state exemptions to federal requirements cannot be mandatory; rather, they must be discretionarily given by the state authority.

Thus, in deciding upon approved regulations, the Department must consider not only the comments received but also this scheme of federal-state relationships.

The Department recognizes the dilemma faced by the owner and users of this necessary facility. We have adopted a new Section 8.6.4.c which places stringent provisions on any surface impoundment which continues to remain open to receive wastes after its final receipt of hazardous wastes.

In our opinion, the Department's approved regulation is consistent, equivalent and no less stringent than the federal provision even though it allows the surface impoundment to remain open after receipt of the the final volume of hazardous waste. The Department is hopeful that the state Office of the Attorney General and the EPA will judge equivalency and stringency in a manner which considers the environmental and health protections achieved by both programs rather than an analysis which merely considers that the State program allows the facility to remain in operation.

The rule that is being approved today will allow a hazardous waste surface impoundment which ceases to receive hazardous waste prior to November 8, 1988 to remain in operation after final receipt of hazardous waste if certain conditions are met. The Department is placing the time limitation for cessation of receiving hazardous waste for several reasons. The variance is a mechanism to address a change in the regulations. Owners and operators, however, must not be given an unlimited amount of time to make adjustments to their their waste disposal practices. Secondly, by selecting a date of November 8, 1988 we are limiting this variance to facilities which are or could be in "interim status" (i.e. facilities which, by virtue of their existence prior to enactment of the law, are not required to be in compliance with the full requirements of the law). In this way facilities which are caught in the transition period are not unduly disrupted, provided the Department is assured that the facility will not harm health and environmental concerns. This philosophy is consistent with the federal program. Thirdly, by limiting this variance process to facilities that are or could be in interim status, the Department' variance process applies to facilities which do not fit into the same "prevention and care" regulatory scheme EPA describes in its preamble. Thus the State can adequately demonstrate that its program is equivalent and no less stringent than the federal program.

The first condition is that the facility will close, in accordance with an approved closure plan, within 180 days after final receipt of its last volume of waste. Other than applying this provision to the receipt of waste, this language is identical to the EPA provision which relates to final receipt of hazardous waste.

Second, the owner or operator of the surface impoundment must have a hazardous waste permit for the unit which requires compliance with all applicable State regulatory provisions as though it were an operating hazardous waste surface impoundment. This requirement makes the

provisions of the State's current program applicable to such unit even though it is no longer receiving hazardous waste. The State's current operating standards are more stringent than the EPA program in many ways, especially as the program protects against off-site migration of groundwater.

The State program establishes a groundwater protection standard which triggers corrective action to prevent migration of groundwater whenever a "statistically significant increase" of a hazardous constituent is discovered in the groundwater. The EPA program, on the other hand, allows the EPA to specify "alternate concentration limits" which could allow contamination of the groundwater and still not require corrective action. Thus the State program requires that corrective action designed to prevent migration of contaminated groundwater must always be taken whenever a "statistically significant increase" is detected. Considered together, the first two requirements mean that the State program will require more stringent groundwater protection standards for a longer period of time at the unit than the EPA program requires.

The third condition which the facility must meet is that the owner or operator must institute procedures to minimize the amount of head created by any liquid in the surface impoundment. When considered together with permit requirements concerning maintenance of adequate freeboard to prevent overtopping, these provisions will also prevent overflow and minimize the pressure which may force liquid out of the unit and into the groundwater.

Ensuring that the facility is actually in compliance with all applicable groundwater monitoring requirements generally applicable to this facility means that the unit will have in place an adequate system for detecting whether the impoundment is leaking. This creates an additional incentive for the owner or operator to operate the facility in compliance with critical provisions of the program.

The fourth condition is that the owner or operator must make a demonstration to the Chief sufficient to show that no adverse impact to human health or to the environment will result from the continued operation, closure, and post closure periods for the unit provided that the owner or operator continues to comply with the approved corrective action program. Such a demonstration requires the same elements as the EPA would require for a facility to be exempt from corrective action (i.e. to receive an alternate concentration limit). In this manner the Department places into effect an extra layer of protection. Under the Department's policy, corrective action must be taken to keep the leak from migrating off-site. This fourth condition, however requires that the Chief agree that the unit is in a location where even if off-site migration did occur, such migration would not be harmful.

As an alternative to this demonstration, the owner or operator could demonstrate that the unit has a synthetic liner which does not show evidence of leaking or a liner of compacted material with a low permeability, or the owner or operator can make a demonstration that the unit has design and operating procedures which, together with its

location characteristics, will prevent the migration of hazardous constituents into the groundwater or surface water beyond the point of compliance. This is the same demonstration that the HSWA would allow a facility to make to be exempted from the double liner requirements. The Department is allowing this condition as an alternative for the fourth condition because it is directed at the same goal as that condition -- preventing adverse impacts to waters from a surface impoundment.

We believe that these conditions implement provisions that are equivalent to and no less stringent than the EPA's requirements for the closure of a hazardous waste surface impoundment.

Allowing the unit to remain open as a waste management unit regulated by the Hazardous Waste Management Act means that the unit will be governed by the State's program for a period of time which is longer than the coverage that unit would receive under the less stringent federal program. For example, if the facility ceases to receive hazardous waste under the federal program, it would be covered by the federal program for thirty years under the post-closure care period. Under the State's scheme, a facility which remained open to receive waste would be covered for the entire time it received waste and then for the thirty year post-closure care period. Due to the relatively slow rates of lateral migration in groundwater, this extra time may be significant for detecting leakage from the unit.

Not only is the regulatory time lengthened for the facility but the facility will also be regulated as an operating unit rather than treated as a closed unit. This means that the facility will be subjected to more stringent regulations than a closed unit as well as more frequent inspections and attention.

Comparing the State's regulatory scenario with the federal "prevention and care" regulatory scenario discussed by the EPA in its preamble is difficult since the federal regulatory scenario does not apply to "interim status" units. Indeed the federal program allows interim status hazardous waste management units to close without either the liners or the leachate collection system which the EPA discussed as a part of their regulatory scenario. The State program plugs this hole in the federal regulatory scheme more effectively than just requiring a cap to "minimize" leachate formation by requiring corrective action and a demonstration of no adverse impact. In addition, the cap which the State will require for this facility upon closure is the same as that required from any permitted facility and is more stringent than the federal cap required for interim status units.

The State variance process is not mandatorily applied. The Chief can reject the request for the variance if the owner's or operator's demonstration does not convince the Chief that the continued operation of the unit will not have an "adverse impact to human health and the environment." This is the same demonstration that EPA requires to allow a leaking facility to continue operation without corrective action. The State program, of course, would not allow a leaking

facility to continue without corrective action. Rather, the demonstration is used by the State as a test to ensure that the unit is located in an area where harm could not occur to human health or the environment if a leak did occur, rather than a test occurring after a leak has occurred. Furthermore, it is only one basis for allowing continued operation of the unit as a waste disposal unit.

If the owner or operator chooses to seek a variance from the time of closure rule based on the liner requirement, the Chief must also review the documentation and approve it before the variance is granted. We should note that an owner or operator seeking the variance on these grounds must meet the same requirements as a facility seeking a variance from the "minimum technology requirements" under the HSWA and thus could remain open to receive hazardous waste under the federal program without installing a double liner.

Section 9.4.1.b.2 Hazardous Wastes Burned for Energy Recovery

One commenter pointed out that the exemption contained in this section is intended to apply only to "conditionally exempt" small quantity generators and therefore suggested that we add that phrase into this provision. We have done so.

Section 10.2.7 Small Quantity Generator Exclusion From Regulation

One commenter questioned the scope of the phrase "manufacturing facilities" in the parenthetical comment contained in this section. We have included a reference to the SIC Manual for clarity.

Section 15.1.b Notification of Transfer of Property Containing Hazardous Waste

One commenter urged that we retain this provision since it was the only place where the State required such notice. After analysis we decided to keep this provision rather than delete it as originally proposed.

Section 15.4.c.1 Ability to Remove Notation on Deed

A commenter urged us to not allow removal of the notation in the deed that hazardous waste was disposed of at the site, even if the hazardous waste was properly removed. We have deleted that ability so that the only option is for the owner or operator to add the notation that hazardous wastes have been removed from this site. In that way all future owners can be notified that hazardous waste was disposed of at that site at some point in time.

COMMENTS OF UNION CARBIDE CORPORATION
ON THE JANUARY 7, 1987 PROPOSED AMENDMENTS TO THE
WEST VIRGINIA HAZARDOUS WASTE MANAGEMENT REGULATIONS

On January 7, 1987, the West Virginia Department of Natural Resources ("DNR") proposed amendments to its Hazardous Waste Management Regulations. The comment period on these proposed amendments extends through February 9, 1987, including a public hearing to be held on that date.

Union Carbide Corporation appreciates the opportunity to comment upon the January 7, 1987 proposed amendments to the West Virginia Hazardous Waste Management Regulations. Union Carbide supports the general comments of the West Virginia Manufacturers Association. Additionally, of specific concern to Union Carbide is the proposed Amendment to §8.6.4.b which would require the completion of closure activities within 180 days after receipt of the final volume of "hazardous waste," rather than "waste," to conform to the May 2, 1986 U.S. EPA amendment to 40 C.F.R. §265.113. This provision is commonly known as the "time for closure" rule.

The proposed revision to §8.6.4.b has the effect of depriving both Union Carbide and the City of South Charleston of the continued use of an environmentally sound waste management facility - Holz Impoundment.

More than seventy-five percent of the wastes disposed in Holz are non-hazardous biological treatment sludges, generated from sophisticated biological treatment facilities. Only the Institute wastewater treatment plant sludge has been defined as hazardous pursuant to the hazardous waste management regulations, solely because the sludge is derived from treatment of a leachate stream generated from the Goff Mountain Landfill. This waste stream, which is hazardous by definition only, will not be disposed at Holz after November, 1988. Significant capacity will be remaining in Holz Impoundment for the continued environmentally sound disposal of the wastewater treatment plant sludge from the City of South Charleston Sewage Treatment Plant and the Union Carbide South Charleston Plant's coal-fired boiler fly ash and wastewater treatment sludges.

The federal Hazardous and Solid Waste Amendments require that the receipt of hazardous waste into surface impoundments be halted by November, 1988, unless the impoundments are retrofitted with synthetic liners. However, surface impoundments could continue to receive non-hazardous wastes. The change in the time for closure rule frustrates this provision by requiring a surface impoundment, which complies with the law by halting the receipt of hazardous waste, to stop all waste receipt and prematurely close.

If the DNR, through its permitting authority, approval of an extended closure plan or maintenance of its existing time

of closure rules, authorizes Holz Impoundment to continue to receive non-hazardous wastes, Holz Impoundment will, nevertheless, be subject to all of the stringent hazardous waste management regulations for the balance of its useful life. This includes permitting requirements and operating standards, including comprehensive groundwater monitoring, and corrective action applicable to hazardous waste management facilities.

If Holz Impoundment is prematurely closed, the large volume of sludge from the South Charleston Sewage Treatment Plant, as well as the Union Carbide South Charleston Plant fly ash and sludges, would be disposed in a solid waste facility, which is not subject to the stringent controls which would be applicable to the future operation of Holz.

West Virginia has no available environmentally acceptable facilities which have the capacity for disposal of the non-hazardous wastewater treatment sludges currently disposed in Holz Impoundment. Locating a proximate sludge disposal site which would provide equivalent protection of human health and the environment as Holz Impoundment is problematic, if not impossible, and such site would not be subject to the stringent controls which are and will be applicable to Holz Impoundment. In any event, it is unlikely that any alternative site for disposal of the large volumes of non-hazardous waste currently managed in Holz Impoundment could

be installed and operational by November 8, 1988. Since the waste handling capacity of Holz Impoundment is essential to the day-to-day operations of the Union Carbide facilities, this could result in a shut-down of such facilities for some extended period of time following November 8, 1988, pending completion of alternative waste handling capacity. Moreover, lack of sludge disposal capacity would have a catastrophic effect on the ability of the City of South Charleston to provide adequate wastewater treatment for an extended period after November 8, 1988.

EPA justifies the change to the time for closure rule on the basis that expeditious closure of hazardous waste disposal surface impoundments, after they are no longer receiving hazardous wastes, improves protection of human health and the environment. This is not the case in regard to Holz Impoundment. Requiring a final cap for Holz Impoundment, prior to the time it is filled to grade, creates significant potential environmental problems due to the premature closure. First, the location, management, and extensive groundwater monitoring system at Holz Impoundment renders it a superior waste management facility for the sewage sludge from the South Charleston Waste Treatment Plant as well as the wastes from the Union Carbide South Charleston Plant. Secondly, the post-closure care requirements of the West Virginia regulations are not as stringent as the requirements which would be applicable to an operating unit. If Holz is required to close,

groundwater monitoring would be continued for 30 years, if it is allowed to continue to operate for its anticipated useful life; groundwater monitoring would be provided for 30 more years after it is filled.

EPA's rationale for requiring closure within 180 days after final receipt of hazardous waste is that the final cover for a surface impoundment is the primary federal control to protect groundwater. The West Virginia Hazardous Waste Management Regulations are significantly more stringent than the federal regulations in that they require, for the continued operation of a surface impoundment, a demonstration that statistically significant increases of hazardous constituents do not occur in the groundwater or surface water during the active life of the facility. If a statistically significant increase of hazardous constituents should occur, an operator of a surface impoundment is required by West Virginia law to implement corrective action to ensure that the surface impoundment is in compliance with the groundwater protection standard and to prevent hazardous constituents from exceeding background concentrations by removing such constituents from the groundwater. Union Carbide believes that the more stringent corrective action provisions of the West Virginia law provide a significantly greater degree of protection of the groundwater and surface waters than placement of a final cover on a surface impoundment.

In summary, Union Carbide urges the DNR to utilize its authority, as provided in the existing corrective action standards, and its authority to require specific operating and closure requirements through permitting, to provide for an environmentally sound waste disposal facility for the Kanawha Valley by keeping Holz Impoundment operational for its useful life.

South Charleston Sanitary Board

P.O. Box 8336
South Charleston, WV 25303
(304) 744-1351
Fax: (304) 744-4403

FAX TRANSMISSION COVER SHEET

Date: July 25, 1995
To: Mike Dorsey
Fax: 558-0256
Subject: Comments Proposed Rule Change
Sender: Tim Carroll

RECEIVED

JUL 25 1995

DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
COMPLIANCE MONITORING & ENFORCEMENT

YOU SHOULD RECEIVE 5 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (304) 744-1351.

Please find attached fax copies of comments on Hazardous Waste Regulation Changes. These are being mailed certified today.

Mike Dorsey
July 24, 1995
Page Two

All proposed rule changes should evaluate the costs as well as the benefits of the regulation. After all, we are striving for Environmental Protection not Environmental Perfection. I appreciate the opportunity to comment on these regulations and would welcome the opportunity for my staff to discuss our concerns with you.

Sincerely,

Richard A. Robb
Mayor

cc: Pat Patterson, Board Member
Ed Perry, Board Member
Paul Rogers, South Charleston Sanitary Board
Rita Johnson, Plant Manager, South Charleston Sewage Treatment Company
Fred Moore, Asst. Plant Manager, Union Carbide Corporation



Richard A. Robb, Mayor

The City of South Charleston

P. O. Box 8597
South Charleston, West Virginia 25303

July 24, 1995

West Virginia Division of Environmental Protection
Office of Waste Management
1356 Hansford Street
Charleston, WV 25301
Attn: Mike Dorsey

RE: Proposed Rule Change, Hazardous Waste Management Regulations

Dear Mr. Dorsey:

As Mayor of the City of South Charleston and Chairman of the South Charleston Sanitary Board, I am concerned about the potential financial impact of the referenced rule changes. Our board has not been able to fully evaluate these changes or the effect upon the residents and business of South Charleston, however preliminary indications are that any rule which eliminates the possibility of continued use of Holz impoundment will ultimately cost our residents and businesses more.

We have found the industries in South Charleston to be good corporate and environmental citizens. Based upon our review, Holz impoundment is environmentally sound and abandonment of this facility for regulatory purposes only would not serve any practical good.

Mike Dorsey
Page Two
July 24, 1995

Based upon our review, Holz impoundment is environmentally sound and the continued use of this facility would serve to substantially reduce operating costs, benefitting the residents of South Charleston and the industrial climate.

All proposed rule changes should evaluate the costs as well as the benefits of the regulation. We appreciate the opportunity to comment on these regulations, and would like to further discuss these issues with your staff.

Sincerely,



Paul E. Rogers
General Manager

cc: Honorable Richard A. Robb, Mayor of South Charleston
Pat Patterson, Board Member
Ed Perry, Board Member
Carolyn Atkinson, City Attorney
Rita Johnson, South Charleston Sewage Treatment Company
Fred Moore, Union Carbide Corporation

FILE COPY

CITY OF SOUTH CHARLESTON
SANITARY BOARD

BOX 8336 • SOUTH CHARLESTON, WV 25303 • 744-1351

July 24, 1995

West Virginia Division of Environmental Protection
Office of Waste Management
1356 Hansford Street
Charleston, WV 25301
Attn: Mike Dorsey

RE: Proposed Rule Change, Hazardous Waste Management Regulations

Dear Mr. Dorsey:

The South Charleston Sanitary Board owns the South Charleston Wastewater Treatment Plant that serves the City of South Charleston, Green Valley Community Public Service District as well as major industries in the City of South Charleston. Industrial Users served by this facility include Union Carbide Main Plant, Union Carbide Technical Center, FMC Corporation, Olin Corporation, South Charleston Stamping Plant, CSX, and other industries located in the South Charleston Ordinance Center.

We have found the industries in South Charleston to be good corporate and environmental citizens. This letter is written to express concern over proposed hazardous waste rule changes, specifically the proposal to eliminate Appendix 1 from the regulations. Currently, sludge from the South Charleston Sewage Treatment Plant is disposed of at Holz impoundment, a Union Carbide RCRA facility. Other options for the disposal of these solids are costly (approaching 2 million dollars per year). Our sanitary sewer rates will need to be raised to reflect this 40 percent increase in operating costs.



LARRY D. MYERS
Director, Environmental Services

Bulk Power Supply
800 Cabin Hill Drive
Greensburg, PA 15601-1689
(412) 838-6206 FAX (412) 838-6888

July 21, 1995

West Virginia Division of Environmental Protection
Office of Waste Management
1356 Hansford Street
Charleston, WV 25301

RECEIVED

JUL 21 1995

DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
COMPLIANCE MONITORING & ENFORCEMENT

ATTN: Mr. Mike Dorsey

Dear Mr. Dorsey:

Allegheny Power Service Corporation (APSC), as agent for Monongahela Power Company (MP) and The Potomac Edison Company (PE), is pleased to submit the enclosed comments pertaining to the June 23, 1995 draft of West Virginia Hazardous Waste Management Regulations (WV47CSR35). APSC, MP, and PE wish to express our appreciation to the West Virginia Division of Environmental Protection for the opportunity to comment on the proposed revisions. Since no specific directions limited comments to the newly proposed language, APSC has reviewed and commented on the entire regulation package, ranging from typographical errors to requested changes in the proposed regulations. The enclosed comments are listed by the applicable draft provision number and page.

If you require further dialogue regarding the enclosed comments, please contact Mr. R. D. Cain at our Cabin Hill office, telephone (412) 838-6814.

Sincerely,

A handwritten signature in cursive script that reads 'L. D. Myers'.

L. D. Myers

RDC/PMP

COMMENTS OF THE
ALLEGHENY POWER SERVICE CORPORATION,
MONONGAHELA POWER COMPANY,
AND THE POTOMAC EDISON COMPANY
ON THE JUNE 1995 DRAFT
WEST VIRGINIA HAZARDOUS WASTE MANAGEMENT REGULATIONS
WV47CSR35

§3.2.1.a./page 5 Small Quantity Generator (SQG) and §3.2.1.b./page 12 Conditionally Emempt Small Quantity Generators (CESQG).

We recommend including provisions to exempt a SQG/CESQG from expanded requirements when during a calendar month the hazardous waste generated exceeds the allowable SQG/CESQG limits as a result of a unique incident and not a routine process. If the WV DEP is uncomfortable with this provision the generator could notify the State of the incident.

§3.2.1.a.L.(c)/page 10

The references to provisions 3.2.1.a.K.(a)(ii) and 3.2.1.a.K(a) within this provision should be replaced with 3.2.1.a.L.(a)(ii) and 3.2.1.a.L.(a), respectively. In addition, the second reference {i.e. 3.2.1.a.L.(a) } may best be replaced by 3.2.1.a.L.(a)(i)-(ii), but the intent is not exactly clear.

§3.2.1.a.L.(e)(iii)/page 10

This provision requires that "agreements" be made with State emergency response teams, emergency response contractors, and equipment suppliers. Allegheny Power Service Corporation has been involved with both local and State emergency response teams through the community right to know laws, but has not developed any formal "agreement" with these entities. The most binding "agreement" we have is our blanket contracts with our emergency response contractors and equipment suppliers. Nevertheless, we believe that replacing the word "agreement" with the word "arrangement", as appears in subprovisions (i) and (ii), more than adequately meets the intent of the provision. Retaining the word "agreement" could imply written obligation which will be very difficult if not impossible to obtain, particularly with local and State emergency response teams. Not knowing how the Division is interpreting "agreement" could leave some in the regulated community unknowingly in noncompliance. Therefore, we recommend replacing the word "agreement" with "arrangement".

§3.2.1.a.L.(f)/page 11

With reference to the comment above, if the word "agreement" is replaced by the word "arrangement" in 3.2.1.a.L.(e)(iii), then it also needs to be changed in this provision.

§3.2.1.a.L.(j)/page 11

This provision requires that regardless of the emergency (fire or spill) the fire department must be contacted. This seems to be contradictory to the first part of this provision and to the provisions discussed above that require “agreements (arrangements)” with emergency response teams. In the event of a spill, notifying the local fire department will only cause congestion at the scene for those “emergency spill response team experts” responding to the incident. Moreover, the first portion of this provision states that the “proper response to the emergency” should be initiated, and the “proper response” may not always be the fire department. Therefore, we recommend deletion of the newly added language to this provision (“including but not limited to calling the fire department in the event of a fire or remediating a spill”).

§7.4.3 and 7.4.3.a/page 18

In the process of striking out the old numbering of these provisions, the newly added “4” appears to have been deleted.

§7.6/page 18

In the process of striking out the old numbering of this provision, the newly added “6” appears to have been deleted.

§47-35-11/pages 20-29

This entire section is misnumbered and the order of the first three provisions is somewhat confusing. We recommend that the first provision read as written (i.e. “The provisions of 40 CFR part 270 . . .”), that the second provision be the third one in the draft as written (i.e. “The term “major . . .”), and that the third provision be the second one in the draft as written (i.e. “For purposes of this section . . .”). This order, we believe is the most logical with respect to the remaining provisions that follow. In addition, the following number changes need to be incorporated into this section:

<u>Provision number as typed in draft</u>	<u>New recommended provision number</u>
<u>11.10.1</u>	<u>11.1</u>
<u>11.10.2</u>	<u>11.3</u>
<u>11.10.3</u>	<u>11.2</u>
<u>11.2.1</u>	<u>11.3.1</u>
<u>11.2.1.a - 11.2.1.c</u>	<u>11.3.1.a - 11.3.1.c</u>
<u>11.2.2</u>	<u>11.3.2</u>
<u>11.2.2.a - 11.2.2.b</u>	<u>11.3.2.a - 11.3.2.b</u>
<u>11.2.2.b.A - 11.2.2.b.D</u>	<u>11.3.2.b.A - 11.3.2.b.D</u>
<u>11.2.2.c - 11.2.2.d</u>	<u>11.3.2.c - 11.3.2.d</u>

Provision number as typed in draft

New recommended provision number

<u>11.2.3</u>	11.3.3
<u>11.2.3.a - 11.2.3.b</u>	11.3.3.a - 11.3.3.b
<u>11.2.3.b.A - 11.2.3.b.F</u>	11.3.3.b.A - 11.3.3.b.F
<u>11.2.4</u>	11.3.4
<u>11.2.4.a - 11.2.4.i</u>	11.3.4.a - 11.3.4.i
<u>11.2.5</u>	11.3.5
<u>11.2.5.a</u>	11.3.5.a
<u>11.2.5.a.A - 11.2.5.a.B</u>	11.3.5.a.A - 11.3.5.a.B
<u>11.2.5.b</u>	11.3.5.b
<u>11.2.5.b.A - 11.2.5.b.B</u>	11.3.5.b.A - 11.3.5.b.B
<u>11.2.5.c</u>	11.3.5.c
<u>11.2.5.c.A</u>	11.3.5.c.A
<u>11.2.5.d</u>	11.3.5.d
<u>11.2.5.d.A - 11.2.5.d.D</u>	11.3.5.d.A - 11.3.5.d.D
<u>11.2.5.e</u>	11.3.5.e
<u>11.2.5.e.A - 11.2.5.e.B</u>	11.3.5.e.A - 11.3.5.e.B
<u>11.2.6</u>	11.3.6
<u>11.2.7</u>	11.3.7
<u>11.2.7.a - 11.2.7.b</u>	11.3.7.a - 11.3.7.b
<u>11.2.8</u>	11.3.8
<u>11.2.8.a</u>	11.3.8.a
<u>11.2.8.a.A - 11.2.8.a.C</u>	11.3.8.a.A - 11.3.8.a.C
<u>11.2.8.b</u>	11.3.8.b
<u>11.2.9</u>	11.3.9
<u>11.2.9.a</u>	11.3.9.a
<u>11.2.9.a.A - 11.2.9.a.B</u>	11.3.9.a.A - 11.3.9.a.B
<u>11.2.9.b</u>	11.3.9.b
<u>11.3</u>	11.4
<u>11.4</u>	11.5
<u>11.5</u>	11.6

§11.2.4.d/page 23

Aside from the correction to this provision number, as noted above, references to 11.2.4.c need to be changed to 11.3.4.c

§11.2.4.e/page 23

Aside from the correction to this provision number, as noted above, references to 11.2.4.d and 11.2.4.e. need to be changed to 11.3.4.d and 11.3.4.e, respectively.

§11.2.4.g/page 23

Aside from the correction to this provision number, as noted above, the reference to 11.2.4 needs to be changed to 11.3.4.

§11.2.4.h/page 23

Aside from the correction to this provision number, as noted above, the reference to 11.2.4 needs to be changed to 11.3.4.

§11.2.5.b.A/page 24

Aside from the correction to this provision number, as noted above, the reference to 11.2.5 needs to be changed to 11.3.5.

§11.2.5.c/page 24

Aside from the correction to this provision number, as noted above, the reference to 11.2.5 needs to be changed to 11.3.5.

§11.2.5.c.A(g)/page 25

A closing parenthesis is needed around the "g" in the provision number.

§11.2.5.c.A(h)/page 25

Aside from the correction to this provision number, as noted above, the reference to 11.2.5 needs to be changed to 11.3.5.

§11.2.5.c..A(j)/page 25

Aside from the correction to this provision number, as noted above, the reference to 11.2.5 needs to be changed to 11.3.5.

§11.2.5.d.A/page 25

Aside from the correction to this provision number, as noted above, the reference to 11.2.5.a needs to be changed to 11.3.5.a.

§11.2.5.d.C/page 26

Aside from the correction to this provision number, as noted above, the reference to 11.2.5.a needs to be changed to 11.3.5.a.

§11.2.5.e..A/page 26

Aside from the correction to this provision number, as noted above, the reference to 11.2.5 needs to be changed to 11.3.5.

§11.2.5.e.A(e)/page 27

Aside from the correction to this provision number, as noted above, references to 11.2.6 and 11.2.7 need to be changed to 11.3.6 and 11.3.7, respectively.

§11.2.5.e.B/page 27

Aside from the correction to this provision number, as noted above, the reference to 11.2.5.e.A needs to be changed to 11.3.5.e.A.

§11.2.6/page 27

Aside from the correction to this provision number, as noted above, references to 11.2.8 and 11.2.9 need to be changed to 11.3.8 and 11.3.9, respectively.

§11.2.7.b/page 28

Aside from the correction to this provision number, as noted above, the reference to 11.2.5 needs to be changed to 11.3.5.

§11.2.8.a.A/page 28

Aside from the correction to this provision number, as noted above, the reference to 11.2 needs to be changed to 11.3.

§11.2.8.b/page 28

Aside from the correction to this provision number, as noted above, the reference to 10.2 needs to be changed to 11.3.5.

§11.4/page 29

Aside from the correction to this provision number, as noted above, the reference to 11.2.4 needs to be changed to 11.3.4.

§13.2/page 30

Since this provision is an exception to the incorporation, by reference, of 40CFR279, we believe the phrase "United States Environmental Protection Agency" should be replaced with the phrase "West Virginia Division of Environmental Protection".

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JUL 24 1995

**COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION**

**DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
COMPLIANCE MONITORING & ENFORCEMENT**

**ON THE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
HAZARDOUS WASTE MANAGEMENT RULE
47 CSR 35**

July 24, 1995

LAW OFFICES
ROBINSON & McELWEE
P. O. BOX 1791
CHARLESTON, WEST VIRGINIA 25326

TELEPHONE (304) 344-5800
TELEFAX (304) 344-9566

600 UNITED CENTER
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P.O. BOX 1580
LEXINGTON, KENTUCKY 40592
TELEPHONE (606) 231-8131
TELEFAX (606) 255-1168

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JUL 24 1995

DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
COMPLIANCE MONITORING & ENFORCEMENT

CLARKSBURG OFFICE
P.O. BOX 128
CLARKSBURG, WEST VIRGINIA 26302
TELEPHONE (304) 622-5022
TELEFAX (304) 622-5065

MICHAEL P. McTHOMAS
DIRECT DIAL NO. (304) 347-8339

July 24, 1995

VIA HAND DELIVERY

Mike Dorsey
Division of Environmental Protection
Office of Waste Management
1356 Hansford Street
Charleston, West Virginia 25301

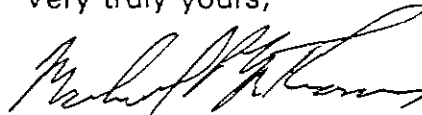
Re: Hazardous Waste Management Regulations

Dear Mike:

Enclosed please find an original and two copies of the comments of the West Virginia Manufacturers Association to the West Virginia Division of Environmental Protection, Office of Waste Management proposed legislative rule "Hazardous Waste Management Regulations," 47 CSR 35. The WVMA files these written comments in accordance with the Notice of Public Hearing on a Proposed Rule filed with the Secretary of State on June 23, 1995, requiring written comments to be filed with the agency by 5:00 p.m. on July 25, 1995.

The WVMA requests that you return one copy that has been stamped as received. The WVMA appreciates the opportunity to comment on the proposed rules. Should you have any questions, please contact me at your convenience.

Very truly yours,



Michael P. McThomas

Enclosures

c: Karen Price, President
West Virginia Manufacturers Association

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

July 24, 1995

I. INTRODUCTION

On June 23, 1995, the West Virginia Division of Environmental Protection, Office of Waste Management ("DEP" or "OWM") filed a proposed legislative rule, "Hazardous Waste Management Regulations," with the Secretary of State. A public hearing on the proposed legislative rule, 47 C.S.R. 35, is to be held on July 24, 1995, at 6:00 p.m. at the Office of Waste Management. The notice provides that written comments will be accepted until 5:00 p.m. on July 25, 1995. Pursuant to this notice, the West Virginia Manufacturers Association ("WVMA") files these comments.

The WVMA represents a broad cross-section of large and small industrial concerns throughout West Virginia. Because WVMA members are subject to, and significantly affected by, the hazardous waste management program, and have been involved with its development since its inception, the WVMA seeks to ensure a reasonable regulatory program.

II. GENERAL COMMENTS

A. **Incorporation by Reference, Determination of Stringency and Constitutional Takings Determination.**

The rule narrative does not include findings regarding incorporation by reference, determination of stringency or constitutional takings as is required by W. Va. Code §§ 22-1-3 and 22-1-3a. While it is evident that the rules have incorporated by reference the federal hazardous waste regulations, 40 C.F.R. Parts 260-270, the rule narrative does not make a statement to this affect. Nor is the incorporation complete. Although the agency has attempted to assist small quantity generators ("SQG") and conditionally exempt small quantity generators ("CESQG") by segregating the requirements that each has to meet to avoid full regulation, the distinction causes confusion and removes available regulatory compliance options otherwise available. For instance, under the state rules for SQG and CESQG, each is required to accumulate or store hazardous waste for designated periods only in tanks or containers. The federal regulation, 40 C.F.R. § 262.34, allows generators to use drip pads so long as the generator complies with the additional requirements set forth therein. This option may be particularly important to wood treatment businesses. To avoid this sort of inconsistency between the state and federal rules, the WVMA urges the OWM to incorporate all of the federal rules by reference, and to eliminate separate rules for SQG and CESQG.

Similarly, the rule narrative does not identify a determination of stringency, i.e. whether the contents of the rule are more or less stringent than the federal counterpart regulations, nor does the narrative identify whether a

constitutional takings may result from implementation of the rule or whether the agency engaged in a conscious analysis in this regard.

Several provisions of the rule remain more stringent than the federal regulations, i.e. 47 C.S.R. 35, § 3.1.1, providing for additional requirements to obtain exemption from the definition of hazardous waste for certain wastewater treatment wastes, and 47 C.S.R. 35, § 3.2.1.b.F., which does not allow CESQG to dispose of hazardous waste in municipal landfills in West Virginia (compare with 40 C.F.R. § 261.5(f)(3).) The areas of difference between the federal and state requirements must be identified and the agency needs to provide specific written reasons which demonstrate that such deviation and stringency is necessary to protect, preserve or enhance the quality of the environment or human health or safety, taking into consideration the scientific evidence, specific environmental characteristics, legislative findings, policies or purposes relied upon.

B. Permit Application Fee Schedule

The WVMA asserts that the fee schedule as proposed by the OWM is astronomically high and poses a significant burden on the ability to do business in West Virginia. These fee increases range from five hundred percent (500%) to one thousand two hundred percent (1,200%). The WVMA believes these fee increases will pose a significant adverse affect on doing business in West Virginia.

The fee increases will not only negatively impact existing businesses, but it will also substantially affect the decisions of businesses to expand or locate in West Virginia. As a matter of state policy, we should not unnecessarily and arbitrarily

establish hurdles to the establishment or relocation of new business. The new fee schedule will cause any business that needs to secure a hazardous waste permit to operate to reevaluate its decision to operate in West Virginia. The attendant fee to obtaining a permit will be another disincentive to doing business in our state. It is counter productive to efforts of both the private and public sectors to establish well paying manufacturing jobs. The social and economic effect of the fees is in all aspects negative. Companies will be forced to allocate additional funds to the permit acquisition and renewal and divert those funds from expansion, employee salary increases, employee hiring and the like. As a matter of public policy, the fees should be rolled back to their current levels. Moreover, the fee expense outlay will ultimately be passed onto consumers. But, in the interim, the cost of the product produced will rise putting West Virginia companies at a competitive disadvantage to companies located in other states and throughout the world. Because all companies must compete on a global basis, we seriously impair West Virginia businesses by adopting the proposed fee schedule.

Recognizing that the statute provides that the OWM may promulgate rules which establish a schedule of fees to recover the costs of processing permit applications and permit renewals, W.Va. Code § 22-18-6(a)(11), the WVMA submits that the cost attributable to the permit application and renewal is not reasonable nor reflective of the time and expense that it should take to review permits. The agency did not justify, in any rudimentary manner, the costs attributable to permitting, either

new issuance, modification or renewal of permits. The agency is urged to develop a reasonable and justifiable fee schedule.

In addition, the agency did not analyze, and did not merely identify, the economic impact on industry other than to comment that the "[i]n some instances, those entitites [sic] directly affected by the rules (i.e., generators, transporters) may require capital expenditures to come into compliance with the new provisions." In this narrative, the agency does not provide any explanation of the economic impact of the proposed rule on specific industries regarding the imposition of the fee schedule. Accordingly, the agency has failed to comply with the fiscal note requirements and provided misleading and inadequate information and analysis of the impact of the fee schedule.

This proposed fee schedule amounts to nothing more than another tax on businesses. West Virginia businesses already forward significant sums in tax revenues to the state coffers as a cost of doing business in West Virginia. The WVMA urges the OWM to reconsider its position with respect to the proposed fee schedule, reevaluate the negative and unanticipated effects, and revise the fee schedule to be more reasonable and justifiable expression of the costs that the agency is authorized to recover.

III. SPECIFIC COMMENTS

Section 1 Scope and Authority

Section 1.6 - Incorporation by Reference

This section is missing strike-throughs and underlines for changing the

effective date of the federal regulations that are incorporated by reference. The rule in effect presently incorporates the July 1, 1994 federal regulations. The date 1994 should be identified to be deleted and the new date of 1995 should be identified with underscoring.

Section 3 Identification and Listing of Hazardous Waste

Section 3.2.1.a Small Quantity Generators

This section was revised at paragraph (d), with respect to determining whether a material is a hazardous waste, by referencing the exclusions set forth in 40 C.F.R. § 261.4. However, this listing of exclusions and exemptions is incomplete if the concept is to ensure that small quantity generators are directed to regulatory exclusions. Specifically, 40 C.F.R. § 261.2(e) identifies materials that are not solid wastes and therefore not hazardous wastes when recycled. Thus, the agency should identify the other federal rules that also allow a generator to determine that a material is not a hazardous waste.

Sections 3.2.1.a.D and E

The deletion of these section identifications appears to be inadvertent and they should be reinstated, especially since there is text of the rule remaining and revised.

Section 3.2.1.a.F(b)

There is a grammatical error in this section after the words "except when" the terms "addition or removing" are used. The correct usage should be "adding or removing."

Section 3.2.1.a.F(f)

Following the words "dike, berm, wall" the words "or other" should be inserted before the word "device." This appears to be a typographical error.

Section 3.2.1.a.L(c)

The cross reference 3.2.1.a.K(a) in the mentioned section is in error. It should be 3.2.1.a.L(a). This error appears twice in the section.

Sections 3.2.1.a.L, 3.2.1.a.M and 3.2.1.a.N

The sections found on page 12 of the proposed rule are out of sequential order. These sections should be 3.2.1.a.M, 3.2.1.a.N and 3.2.1.a.O, respectively.

Section 3.2.1.b Conditionally Exempt Small Quantity Generators

Section 3.2.1.b.G(b)

This section notes that if waste is mixed with used oil, the mixture is subject to 40 C.F.R. Part 266, Subpart E. The proposed rule revises the citation, correctly, to Part 279. However, the remainder of the paragraph is superfluous, and conflicts with the specific provisions of 40 C.F.R. Part 279, relating to used oil and mixtures thereof. Accordingly, this paragraph should read as follows:

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

This suggested change will eliminate any confusion as to the appropriate requirements. All used oil activities should be regulated pursuant to Part 279 unless otherwise specified in 40 C.F.R. Part 279.

Section 5 Standards Applicable to Generators of Hazardous Waste

Section 5.5

This section states that all references to and requirements of small quantity generators in the federal regulations should be deemed references to section 3.2.1. As noted above, although the agency has attempted to assist small quantity generators ("SQG") and conditionally exempt small quantity generators ("CESQG") by segregating the requirements that each has to meet to avoid full regulation, the distinction unintentionally limits the ability of SQGs to use the full range of federal regulatory options by stating that all references to and requirements of SQG "shall be deemed references to Section 3.2.1." This Section 5.5 causes confusion and does not add any clarification to the use of Section 3.2.1 by SQG. While the requirements for SQG are centralized in Section 3.2.1, the inclusion of this statement could be interpreted to foreclose regulatory options provided by the federal regulations, i.e. exemption from solvent waste land disposal restrictions set forth in 40 C.F.R. § 268.30(a)(1). In addition, Section 5.5 covers SQGs, but does not mention CESQGs although the citation to Section 3.2.1 covers both SQGs and CESQGs. Therefore, the WVMA recommends deletion of this Section 5.5 in its entirety, or in the alternative, replace the mandatory language of "shall" and "deemed" with "are intended to" or words of similar consequence.

Section 8 Interim Status Standards For Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

Section 8.3

This Section 8.3 incorporating the provisions of 40 C.F.R. Part 265, Subpart J, relating to tank systems is proposed for deletion; however, this proposed deletion makes a significant change to the regulatory law of West Virginia that has been in effect and relied upon since April 1, 1988 -- the day the hazardous waste rule implementing the tanks systems became effective. Although the federal regulations note a date of January 12, 1987, the trigger for calculating the time window available to retrofit, upgrade or close out particular tanks within eight years, is the date the rule first became effective in West Virginia: to wit, the April 1, 1988. Thus, approximately one year of time remains prior to the requirement to implement the EPA standards imposed in the regulation. This section should not be amended or revised until after the expiration of the time frame as originally adopted by the agency and approved by the Legislature. Any termination by rule change at this time, a year prior to the required, is blatantly unfair to those persons who relied in good faith on the rule as proposed, revised, and approved by the Legislature.

IV. CONCLUSION

The WVMA appreciates this opportunity to offer these comments, and trusts that the OWM will give these comments careful and due consideration. The WVMA stands ready to assist the OWM in development of additional comments, explanations or revisions, and will provide additional information or research upon request. However, the WVMA is particularly concerned with the revised fee schedule,

and accordingly, will continue to pursue alternative fees throughout the rule-making process and beyond. If the OWM has any questions or if additional information is required, please contact the WVMA at you earliest possible convenience.

Respectfully submitted this 24th day of July, 1995.

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**RESPONSE TO COMMENTS
ON
WEST VIRGINIA HAZARDOUS WASTE MANAGEMENT REGULATIONS
TITLE 47 SERIES 35**

The Division of Environmental Protection, Office of Waste Management (OWM) received written comments from the West Virginia Manufacturer's Association, Union Carbide Corporation, Appalachian Power Company, Allegheny Power System, The City of South Charleston and the South Charleston Sanitary Board. The following are the comments submitted and the responses thereto:

Comment: Three commenters opposed the elimination of Appendix 1 from the proposed rule. These commenters expressed economic concerns and stated that the Holz Impoundment (which is the sole facility affected by the appendix) is not an environmental threat and should not be closed for purely regulatory concerns. One commenter noted that regardless of any change to this rule, the impoundment will be able to remain open until the expiration of its current Hazardous Waste Management Permit in 1998.

Response: OWM agrees with the comment that even if Appendix 1 is removed, Holz Impoundment will be able to remain in use until its permit expires in 1998 and will then have a given amount of time for proper closure and post closure monitoring. It seems a bit odd to be discussing a specific operating unit when addressing comments to a rule but, as noted above, the Holz Impoundment is the only unit in the entire state to be impacted by the proposed change; indeed Holz is the only unit of its type that is still operating in the entire country.

The United States Environmental Protection Agency (EPA) has gone to great lengths to close surface impoundments such as Holz that received hazardous wastes because unlined surface impoundments are inherently non-protective of public health and the environment. Statements that this particular unit is environmentally sound and has shown no exceedences in groundwater parameters are not entirely accurate.

Chapter 22 Article 18 of the West Virginia Code mandates the West Virginia Division of Environmental Protection to seek regulatory primacy for implementation of the Resource Conservation and Recovery Act. The State currently has such primacy for the base program and is seeking primacy for subsequently enacted portions of the program. By allowing Appendix 1 to remain in the Rule, the State would seriously jeopardize its continuing base program primacy and forfeit its ability to gain further primacy.

One commenter cites West Virginia Division of Natural Resources response to comments from 1987. In the intervening time environmental regulations have evolved and matured, eight year old responses do not necessarily reflect today's realities. It must also be pointed out that the affected parties still have more than two (2) years to plan for the disposal of their sewage treatment sludge.

APPALACHIAN POWER COMPANY

Comment: One commenter noted that Section 3.2.1.b.F(b) of the proposed rule is more stringent than the federal regulations in that it prohibits the disposal of Conditionally Exempt Small Quantity Generator waste in industrial or municipal solid waste facilities.

Response: The comment is correct that this section is more stringent than the federal regulation; however, the West Virginia Solid Waste Management (Title 47 Series 38) prohibit the disposal of hazardous waste in any solid waste facility; therefore, in order to prevent confusion the hazardous waste rules are consistent with the solid waste rules. It would be unfair for this agency to indicate to one segment of the regulated community that an action was acceptable and legal when, in reality, it is not. It is much simpler and more appropriate to prohibit the disposal of hazardous waste in industrial or municipal solid waste facilities than to stand silent or approve the practice in the hazardous waste arena and then punish generators in the solid waste arena.

ALLEGHENY POWER COMPANY

Comment: §3.2.1.a This comment recommended exempting Conditionally Exempt Small Quantity Generators and Small Quantity Generators from expanded requirements when they exceed the hazardous waste generation limits during a calendar month as a result of a unique/non routine incident.

Response: The OWM is sensitive to the situation described in the comment as it is a fairly regular occurrence. Currently it is handled as recommended in the comments. That is, if a generator exceeds a regulatory limit due to a non-routine incident and notifies the OWM, no action is taken by the agency. It simply doesn't make sense to perform all the actions necessary to move a generator from one category to another and then move them back the following month. Because there has never been a problem with this system, the agency sees no reason to alter the rule to specifically address the issue.

Comment: §3.2.1.a.L(c) This commenter (as well as one other) pointed out that numbering and references located at 3.2.1.a.K(a)(iii) and 3.2.1.a.K(a) need to replace the letter K with the letter L.

Response: OWM has made this correction.

Comment: §3.2.1.a.L(e)(iii) This commenter proposed that the term agreement be replaced with the word arrangement at the cited location to promote consistency within the rule and to allow

the regulated

community more flexibility in meeting the requirements.

Response: The OWM agrees with this recommendation and has made the appropriate change.

Comments: §3.2.1.a.L(f) This commenter proposed that the word agreement be replaced with the word arrangement for the reasons stated above.

Response: The OWM agrees with this recommendation and has made the appropriate change.

Comment: §3.2.1.a.L(j) This commenter suggested a change in this section because the current wording seems to require the calling of the fire department in the event of an incident other than a fire.

Response: The OWM disagrees that the wording in this section is unclear or ambiguous as it specifically gives the examples 1) "calling the fire department in the event of a fire or" 2) "remediating a spill". This language was inserted at the suggestion of EPA to make the current rule consistent with federal regulations; therefore, it will remain.

Comment: §7.4.3 and 7.4.3.a This commenter stated that the OWM apparently inadvertently struck out the newly added 4 to the referenced sections.

Response: The commenter is correct and the changes have been made.

Comment: §7.6 This commenter noted that the OWM apparently inadvertently struck out the newly added 6 to this section.

Response: The commenter is correct and the change has been made.

Comment: §11 One commenter noted that the entire section had apparently been misnumbered and provided a suggested renumbering system and corrections to interval references to correct the problem.

Response: The commenter is correct that the section was largely misnumbered. The section has been renumbered and internal references have been corrected. The suggested renumbering system was not used; however, because it did not fit the needs of the section. The OWM does appreciate the effort put forth by the commenter on this issue.

Comment: §13.2 One commenter suggested that the phrase "United States Environmental Protection Agency" in this section needed to be changed to "West Virginia Division of Environmental Protection".

Response: This section coincides with 40 CFR Part 279 of the federal regulations which deal with the regulation of used oil. The particular section concerns the use of used oil as a host suppressant and provides that a state may petition the EPA to allow the use of used oil for that purpose. Clearly, the state cannot petition itself and the section in question is designed to insure the involvement of EPA in such decision. Therefore, this language will not be changed.

WEST VIRGINIA MANUFACTURERS ASSOCIATION

GENERAL COMMENTS

Comment A: The commenter states that statutory requirements under WV Code §§22-1-3 and 22-1-3a were not met in that a determination of stringency was not made. Further it is proposed that in its attempt to assist Small Quantity Generators and Conditionally Exempt Small Quantity generators, the OWM has removed regulatory options that might be advantageous to certain generators and recommends that the federal regulations for these classes of generators be adopted by reference also.

Response: Regarding the statement on the determination of stringency cite above §22-1-3a states in part that the determination applies to rules promulgated "on or after the first day of July, one thousand nine hundred ninety-four" which are "new or amended environmental provisions". The provisions to which we assume the commenter refers are neither new nor amended. It is the OWM's position that no "new or amended" provisions in this rule are more stringent than the counterpart federal regulations.

It is true that at least two provisions of the rule which have been in effect for many years are, indeed, more stringent than their federal counterpart; however, those provisions (which include requiring Conditionally Exempt Small Quantity Generators to notify of their hazardous waste activity and prohibiting Conditionally Small Quantity Generators from disposing of their wastes in municipal or industrial landfills) are intended more as a service to the regulated community than as a regulatory burden.

The reasons for requiring Conditionally Exempt Small Quantity Generators to notify is that there is no reputable disposal company that OWM is aware of that will accept hazardous waste from any generator that does not have an EPA ID number. An EPA Identification number is obtained by filing a Notification of Hazardous Waste Activity.

West Virginia Solid Waste Management Regulations (Title 47 Series 38) prohibit the disposal of any hazardous wastes in West Virginia landfills regardless of the source. It would be inappropriate for different units within the same agency (hazardous waste and solid waste) to send mixed signals to the regulated community on this issue; therefore, it is made clear that this action is not allowed in the hazardous waste management rule also. (See also the comments of Appalachian Power Company)

As stated above, these provisions have been part of the West Virginia Hazardous Waste Management Regulations for many years and have not been amended. OWM, therefore, believes that the cited statutory requirements do not apply.

The second part of this General Comments Section was a concern that, as written, the Small Quantity Generator and Conditionally Exempt Small Quantity Generator rules remove options for these generators that are open to them in the federal regulations. It is not the OWM's intention to in any way disadvantage these generators; in fact, the effort to consolidate the requirements was intended to make compliance easier for generators of small amounts of hazardous waste. In any event it is believed that an addition in §5.5 clarifies the intent of the OWM and preserves the options of the generators. This addition states:

"Section 3.2.1 is not intended to limit the access of Small Quantity Generators to any Sections of the federal regulations which may have an impact upon their operations".

Comment B: The commenter feels that fee schedule proposed by the OWM is far too high and has not been supported by data that shows the costs of processing permits is equal to the proposed fee increase. Further the commenter believes that the increase will be a significant burden to industry, will have an adverse effect on the potential for doing business in West Virginia and will result in increased consumer costs.

Response: The OWM appreciates the commenter's concern about the fiscal impact of this revised fee schedule. The OWM has studied the costs associated with permit processing, however, and has compared the proposed schedule with the fees charged by surrounding states as well as the country in general and feels that the fees contained in this rule are reasonable and as accurate as can be achieved in an exercise such as this.

The current fee schedule is well over a decade old and has long ceased to accurately reflect the needs of the OWM. In addition, the lack of a non-dynamic state funding source for the hazardous waste permitting program threatens the existence of the program itself. It is therefore necessary to seek a method to fund the permitting unit that will insure that it has adequate financial resources to

remain a viable unit in the face of uncertain financial times. OWM believes that a stable financial situation at this office is advantageous to the regulated community and to the state in general.

Specific Comments

Comment: §1.6 Incorporation by Reference. The commenter noted that a date, strike-through and underline is missing at the effective date. 1994 needs to be inserted and struck through, then 1995 needs to be added and underlined.

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

Comment: §3.2.1.a The commenter states that referencing the exclusions at 40 CFR 261.4 is not sufficient to identify all potential exclusions or exemptions and that 40 CFR 261.2(e) also needs to be referenced.

Response: OWM has added a reference to 40 CFR 261.2(e) at §3.2.1.a.B(d) that clarifies the issue.

Comment: §3.2.1.a.D and 3.2.1.a.E The commenter points out that these section identifications appear to have been inadvertently left out and shall be replaced.

Response: The commenter is correct and the section identifications have been replaced.

Comment: §3.2.1.a.F(b) The commenter points out a grammatical error where the word "addition" should actually be "adding".

Response: The commenter is correct and the change has been made.

Comment: §3.2.1.a.F(f) The commenter points out that the words "or other" appear to be missing prior to the word "device" in this section.

Response: The commenter is correct and the words have been added to make the sentences read in part "...dike, berm, wall or other device."

Comment: §3.2.1.a.L(c) The commenter points out that the referenced citation is cross referenced as 3.2.1.a.K(a) and should be changed.

Response: This error was noted by Allegheny Power Systems also and has been remedied.

Comment: §3.2.1.a.L, 3.2.1.a.M and 3.2.1.a.N The commenter points out that these identifications are in error and should be 3.2.1.a.M, 3.2.1.a.N and 3.2.1.a.O respectively.

Response: The commenter is correct and the changes have been made.

Comment: §3.2.1.b.G(b) The commenter points out that the language in the citation after the phrase "...is subject to 40 CFR part 279" is superfluous and conflicts with 40 CFR part 279.

Response: The commenter is correct and the conflicting portion of the section has been removed. The cite now reads:

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

Comment: 5.5 The commenter states that this section limits the ability of Small Quantity Generators and Conditionally Exempt Small Quantity Generators to access all areas of the federal regulations that may be advantageous to them and suggests the deletion of the section or the use of non mandatory language such as "shall" or "are intended to".

Response: This section was added to the rule at the request of EPA. While OWM understands the commenter's concerns, it is in no way the intention of OWM to limit access to the federal regulations to any generator. To that end OWM has changed the mandatory language and added another sentence so the section now reads in part "...and 262.44 are intended to be references to Section 3.2.1 and the subparagraphs herein, as appropriate. Section 3.2.1 is not intended to limit the access of Small Quantity Generators to any sections of the federal regulations which have an impact upon their operations."

Comment: §8.3 The commenter expressed the fear that by adopting the January 12, 1987 date for the effective date for calculating the time window to upgrade, retrofit or close certain tanks (eight years) generators in West Virginia would be, in effect, cheated out of a year to achieve compliance since the previous rule used the date April 1, 1988 as the trigger date. It was requested that the April 1, 1988 date be retained.

Response: Because this rule package will not be considered until the 1996 session of the State Legislature, and if approved, will not take effect until after April 1, 1996 the comment is moot. Facilities had eight (8) years to upgrade, retrofit or close certain tanks. No matter which date is used (January 12, 1987 or April 1, 1988), the time period will be over by the time this rule comes into effect.

Attachment
to
Legislative Rule-Making Review Committee
Questionnaire
REASONS FOR AMENDMENTS

Comment: **§§7.4.3 and 7.4.3.a** One commenter noted that the agency apparently inadvertently struck at the newly added number 4 at these locations.

Response: The commenter is correct and the number 4 has been put back at **7.4.3** and **7.4.3.a**.

Comment: **§7.6** One commenter noted that the agency had apparently inadvertently struck out the newly added number 6 at this location.

Response: The commenter is correct and the number 6 has been put back at **7.6**.

Comment: **§3.2.1.a.L(c)** Two commenters pointed out that references to **3.2.1.a.K(a)** and **3.2.1.a.K(a)(iii)** should actually read **3.2.1.a.L(a)** and **3.2.1.a.L(a)(iii)** respectively.

Response: The commenters are correct and the appropriate changes have been made to section **3.2.1.aL(c)**.

Comment: **§3.2.1.a.L(e)(iii)** One commenter proposed that the term "agreement" in this section be replaced with the word "arrangement" to promote consistency and allow greater flexibility.

Response: The agency agrees with the suggestion and has replaced the term "agreement" with the term "arrangement" at section **3.2.1.a.L(e)(iii)**.

Comment: **§3.2.1.a.L(f)** One commenter proposed that the term "agreement" in this section be replaced with the term "arrangement" to promote consistency and allow greater flexibility.

Response: The agency agrees with the suggestions and has replaced the term "agreement" with the term "arrangement" at section **3.2.1.a.L(f)**.

Comment: **§11** One commenter noted that the section had been misnumbered and recommended a numbering system.

Response: The commenter is correct that there was a numbering error in section **11**. The section has been renumbered.

Legislative Rule-Making Review Committee Questionnaire

Reasons for Amendments

July 31, 1995

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Comment: One commenter states that, in its attempt to assist Small Quantity Generators and Conditionally Exempt Small Quantity Generators, the agency has limited access to certain provisions which may be useful to those generators.

Response: The agency has added language at Section 5.5 that resolves this issue. It is not the agency's intention to limit the access of any generator to relevant positions of the federal regulations.

Comment: §1.6 One commenter noted that the date 1994 had been omitted and that the date 1995 had not been underlined.

Response: The agency agrees with this comment. At §1.6 the date 1994 has been added and struck through and the date 1995 has been underlined.

Comment: §3.2.1.a One commenter suggested that the exclusions referenced at this location were not sufficient and that a reference to 40 CFR part 261.2(e) also needed to be made.

Response: The agency concurs and a reference to 40 CFR part 261.2(e) has been added at section 3.2.1.a.B(d).

Comment: §3.2.1.a.D and E One commenter pointed out that those section identifications appear to have been inadvertently eliminated.

Response: The commenter is correct and the section headings 3.2.1.a.D and 3.2.1.a.E have been inserted at the appropriate points.

Comment: §3.2.1.a.F(b) One commenter pointed out that the word "addition" should actually be "adding".

Response: The commenter is correct and the word "adding" has replaced the word "addition" at section 3.2.1.a.F(b).

Comment: 3.2.1.a.F(f) One commenter pointed out that the words "or other" appear to be missing before the word "device" at this location.

Response: The commenter is correct and the wording at section **3.2.1.a.F(f)** is now "or other device".

Comment: **§3.2.1.a.L, 3.2.1.a.M and 3.2.1.a.N** One commenter pointed out that these sections should actually be **3.2.1.a.M, 3.2.1.a.N and 3.2.1.a.O** respectively.

Response: The commenter is correct and the section headings **3.2.1.a.L, 3.2.1.a.M and 3.2.1.a.N** have been changed to **3.2.1.a.M, 3.2.1.a.N and 3.2.1.a.O** respectively.

Comment: **§3.2.1.b.G(b)** One commenter noted that the language in this section after the phrase "...is subject to **40 CFR part 279...**" is superfluous and contradicts **40 CFR part 279**.

Response: The commenter is correct and section **3.2.1.b.G(b)** now reads:

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

Comment: **§5.5** One commenter expressed concern that this section limited access of Small Quantity Generators and Conditionally Exempt Small Quantity Generators to areas of the federal regulations which may be advantageous to them and suggested elimination of the section or the use of non-mandatory language.

Response: The agency has added language at section **5.5** that makes it clear that it in no way intends to limit the access of small generators to useful sections of the federal regulations.

Comment: §3.2.1.a.L9J) One commenter suggested a change in this section because the current wording seems to require the calling of the fire department in the event of an incident other than a fire.

Response: The agency rejects this comment and feels that the wording is unambiguous and clearly does not require the calling of the fire department in cases that do not involve fire. The wording in question merely gives examples for the generator.

Comment: §8.3 One commenter expressed concern that by adopting the January 12, 1987 trigger date for tank upgrading or closing instead of the current date of April 1, 1988, that some generators might lose one year (the rule provide for eight years) for the mandated actions.

Response: Because this rule will not become effective until 1996, the eight year period will have expired regardless of which date is used. Therefore, this comment is rejected.

Comment: §13.2 One commenter suggested that the phrase "United States Environmental Protection Agency" in this section be changed to "West Virginia Division of Environmental Protection".

Response: The agency rejects this comment due to the fact that the applicable section involves a requirement that cannot be delegated to the state.

Comment: Three commenters opposed the elimination of Appendix 1 from the proposed rule.

Response: The agency rejects these comments due to the nature of the affected by this change and that unit will have until 1998 to plan for the close of the unit. In addition, if Appendix 1 were to remain, federal authorization of the state's hazardous waste management program would be in jeopardy.

Comment: Two commenters noted that Section 3.2.1.b.F(b) of the proposed rule which prohibits the disposal of Conditionally Exempt Small Quantity Generator waste in municipal or industrial solid waste facilities and ask that this be remedied.

Response: The agency rejects these comments due to the fact that the West Virginia Solid Waste Management Regulations (Title 47 Series 38) prohibit the disposal of any hazardous waste in West Virginia facilities.

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Reasons for Amendments

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Comment: One commenter recommended exempting Conditionally Exempt Small Quantity Generators and Small Quantity Generators when they exceed the hazardous waste generation limits due to unique/non-routine occurrences.

Response: The recommended regulatory change is, in effect, how the agency currently handles unique/non-routine occurrences. It is necessary to maintain the regulations as they currently are to prevent abuse of the system. The comment is, therefore, rejected.

Comment: One commenter objected to the increased fee schedule for hazardous waste permits and asked that the schedule be left at its current level.

Response: The agency rejects this comment due to the fact that the cost of permit fee preparation and review have increased dramatically in the time since the current schedule was approved. The agency's review of the associated costs and the needs of the office demonstrate that the proposed schedule is consistent with those costs and needs.