

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

FILED

APR 11 2 37 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

AMENDMENT TO AN EXISTING RULE: YES X, 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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) 4224

SECTION 64-3-1, PASSED ON March 9, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: June 1, 1996

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

8.60



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

March 12, 1996

H Michael Dorsey
DEP - Waste Mgmt/Water
Resources
Compliance Monit. & Enforcement Sc
1356 Hansford Street
Charleston, WV 25301

HB 4224 authorizing, **Title 47, Series 35, Hazardous Waste Management Regulations** passed the Legislature on **March 9, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **HB 4224** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 4224 Section 64-3-1(e)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division

RULE PROMULGATION HISTORY ABSTRACT

**TITLE 47
DIVISION OF ENVIRONMENTAL PROTECTION
WATER RESOURCES-WASTE MANAGEMENT**

HAZARDOUS WASTE MANAGEMENT RULE

Series 35

June 23, 1995	Filed with Secretary of State - Notice of Public Hearing
July 24, 1995	Public Hearing Held
July 25, 1995	End of Comment Period
July 31, 1995	Agency Adopted Rule Filed with Secretary of State and Legislative Rule Making Review Committee
January 10, 1996	Rule Making Review Committee Meeting
January 18, 1996	Modified Rule Filed with Secretary of State and Legislative Rule Making Review Committee
April 1, 1996	H.B. 4224 Approved by Governor
April 11, 1996	Final Filed with the Secretary of State
June 1, 1996	Effective Date

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

APR 11 2 37 PM '96

FILED



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

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

April 10, 1996

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

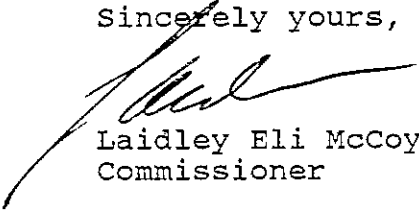
RE: 47-CSR-35 - "Hazardous Waste Management"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office the above-captioned rule as final adoption of a legislative rule authorized by the West Virginia Legislature.

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:cc

Attachment

TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
WATER RESOURCES - WASTE MANAGEMENT

APR 11 2 37 PM '96
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.** -- April 11, 1996.

1.4. **Effective Date.** -- June 1, 1996.

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, 1995, unless otherwise noted in the text of this rule. This incorporation by reference is not intended to replace or abrogate federal authorities granted the Resource Conservation and Recovery Act of 1976.

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

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

1.6.a.2. "Chief of the office of waste management, West Virginia division of environmental protection" shall be substituted

for "administrator," "regional administrator," and "director." In those sections that are not adopted by reference or that are not delegable to the state, "administrator", "regional administrator", and "director" shall have the meaning defined in 40 CFR 260.10.

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

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

1.7. Cross Reference. -- Whenever a reference is cited in a provision incorporated by reference which cross reference was not incorporated by reference, the provisions of the applicable state law and rules, if any, control to the extent of any conflict or inconsistency. Where state rules are present and there is a question, the state rules govern. Where there are no state regulations present, federal regulations govern. For example, cross reference to 40 CFR part 264 subpart O -- Incinerators, which was not incorporated by reference, would need to be referenced to the applicable West Virginia air quality board rule on incineration of hazardous waste, 45 CSR 25.

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

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

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

2.1. 40 CFR Part 260. -- The provisions of 40 CFR part 260 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

2.1.a. The definitions of terms used in this rule shall have the meaning ascribed to them in 40 CFR parts 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 273 and 279 with the exceptions, modifications and additions set forth in this section.

2.1.a.1. "Major facility" means a disposal or treatment facility which disposes or treats an amount of hazardous waste exceeding or equal to one thousand (1000) tons during a calendar year, and any storage facility having a storage capacity for one thousand (1000) tons of hazardous waste or more.

2.1.a.2. "Full regulation" means those rules applicable to generators of greater than one thousand (1000) kilograms of non-acutely hazardous waste in a calendar month and/or who treat, store or dispose of hazardous waste at their facility.

2.1.a.3. "Mercury containing lamp" means an electric lamp in which mercury is purposely introduced by the manufacturer for the operation of the lamp. Mercury containing lamps commonly include florescent lamps.

2.1.a.4. "Universal Waste" means any of the following hazardous wastes that are managed under the universal waste requirements of 40 CFR part 273:

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

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

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

2.4. Petitions for Waste Exclusions.

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

2.4.a.1. A copy of the petition submitted to the administrator of the environmental protection agency pursuant to 40 CFR § 260.22, including all demonstration information;

2.4.a.2. A copy of the administrator's approval granting the exclusion pursuant to 40 CFR § 260.20(d); and

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

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

2.4.c. The chief shall not deny a petition to exclude a waste at a particular facility that has been approved by the administrator unless scientifically supportable reasons for such denial are advanced which had not been presented to the administrator.

2.5. Petitions to amend the regulations to include additional wastes as universal wastes.

2.5.a. Persons desiring to include a waste as a universal waste may petition the chief for such an exclusion after having received approval from the administrator of the environmental protection agency. The petition shall include:

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

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

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

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

2.5.c. The chief shall not deny a petition to include a waste as an universal waste that has been approved by the administrator unless scientifically supportable reasons for such denial are advanced which had not been presented to the administrator.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 47-35-4. 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.a. Any person as described in subsection 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.b. 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 subdivision 4.1.a. of these rules or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in subdivision 4.1.a 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 subsection 4.1 of these rules shall provide a copy of that notification to the chief.

4.2.a. Any person involved in hazardous waste activities that did not comply with the notification requirements of EPA, as referenced above in subsection 4.1 of the rules, but is subject to those requirements shall notify the chief in writing of his hazardous waste activities within thirty (30) days of the effective date of these rules. Notification may be accomplished by the use

of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

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

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

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

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

4.2.f. New generators and those initiating activities subsequent to the EPA notification period referenced in subdivision 4.1.a. 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. 40 CFR Part 262. -- The provisions of 40 CFR part 262 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

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

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

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

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

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

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

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

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

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

7.1. Rules of the Air Quality Board, 45 CSR 35. -- 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.a. Owners or operators of hazardous waste incinerators;
and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.7.a. Consult the air quality board regulations, 45 CSR 25, "Regulations to Prevent & Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities".

7.8. **40 CFR Part 264, Subparts AA, BB, CC.** -- The provisions of 40 CFR part 264, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the regulations 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. **40 CFR 265.** -- The provisions of 40 CFR part 265 are adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

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

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

8.3. **40 CFR §§ 265.12(a), 265.149 and 265.150.** -- The provisions of 40 CFR 265.12(a), 265.149, and 265.150 are excepted from incorporation by reference.

8.4. **40 CFR §§265.345, 265.347, 265.352.** -- The provisions of 40 CFR §§ 265.345, 265.347 and 265.352 relating to incinerators are excepted from incorporation by reference. Consult the rules of the air quality board regarding emissions from incinerators.

8.5. **Thermal Treatment.** -- The provisions of 40 CFR part 265, subpart P -- Thermal Treatment are incorporated by reference except for 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.

8.6. **40 CFR Part 265 Subparts AA, BB, CC.** -- The provisions of 40 CFR part 265, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the 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. 40 CFR Part 266. -- 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. LAND DISPOSAL RESTRICTIONS.

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

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

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

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

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

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

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

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

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

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

11.3. 40 CFR 270.2 Definitions

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

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

11.4. Application Fees.

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

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

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

11.5. Draft Permits.

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

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

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

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

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

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

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

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

11.6. Fact Sheet.

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

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

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

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

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

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

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

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

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

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

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

11.7. Public Access to Information.

11.7.a. Any records, reports, or information and any permit, permit applications, and related documentation within the chief's possession shall be available to the public for inspection and

copying; provided, however, that upon a satisfactory showing to the chief that such records, reports, permit documentation, or information, or any part hereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the chief shall consider, treat, and protect such records as confidential.

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

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

11.7.d. No information shall be protected as confidential information by the chief unless it is submitted in accordance with the provisions of subdivision 11.7.c. of these rules and no information which is submitted in accordance with the provisions of subdivision 11.7.c. 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.

11.7.e. All information which meets the tests of subdivision 11.7.d. 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 subsection 11.7.d. of these rules, the chief shall mark the information "REJECTED" and promptly return such information to the person submitting such information.

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

11.7.g. Nothing in subsection 11.7. of these rules may be construed as limiting the disclosure of information by the division to any officer, employee, or authorized representative of the State

or federal government concerned with effecting the purposes of subsection 11.7. of these rules.

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

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

11.8. Public Participation in Permit Process.

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

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

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

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

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

11.8.d. Methods. Public notice of activities described in subsection 11.8. of these rules shall be given by the following methods:

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

11.8.e.1. The applicant;

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

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

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

11.8.e.5. Other appropriate federal or state agencies including, but not limited to, the U.S. fish and wildlife service,

the U.S. forest service, the West Virginia department of culture and history, the West Virginia department of health, other governmental authorities including any affected states, and the Advisory Council on Historic Preservation (Suite 430, 1522 K Street, N.W., Washington, D.C. 20005); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.10. Contents.

11.10.a. All public notices issued under subsection 11.8. of these rules shall contain the following information:

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

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

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

11.10.a.4. The name, address, and telephone number of a person from whom interested persons may obtain further information

including copies of the draft permit or fact sheet, and the application; and

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

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

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

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

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

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

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

11.12. Public Hearings.

11.12.a. 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.

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

11.13. Reopening of the Public Comment Period.

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

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

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

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

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

11.14. Response to Comments.

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

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

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

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

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

11.16. 40 CFR § 270.24. 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.

11.17. 40 CFR §§ 270.60(b) and 270.64. The provision of 40 CFR §§ 270.60(b) and 270.64 are excepted from incorporation by reference. Consult the rules of the office of water resources and

the environmental quality board regarding the requirements for underground injection wells.

§ 47-35-12. DEED AND LEASE DISCLOSURE; NOTICE IN DEED TO PROPERTY.

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

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

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

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

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

§ 47-35-13. UNIVERSAL WASTE RULE.

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

13.2 In addition to pesticides, lead acid batteries, and thermostats covered by 40 CFR part 273, mercury containing lamps, commonly known as florescent light bulbs, are also covered under part 273 as follows:

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

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

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

(d) Whenever the phrase "mercury thermostats" or "thermostats" is used in 40 CFR part 273, the phrase is to be read to include mercury containing lamps except where such language refers to

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

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

13.5.a. "Mercury containing lamp" means an electric lamp in which mercury is purposely introduced by the manufacturer for the operation of the lamp. Mercury containing lamps commonly include florescent lamps.

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

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

13.6. 40 CFR §§ 273.20, 273.40, 273.56 -- Exports are excepted from incorporation by reference and shall remain the provenance of the environmental protection agency and in addition to the requirements contained therein, any person subject to the provisions of part 273 shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by part 273.

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

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

§ 47-35-14. STANDARDS FOR THE MANAGEMENT OF USED OIL.

14.1. 40 CFR Part 279. -- The provisions of 40 CFR part 279 are hereby adopted and incorporated by reference with the exception contained in this section.

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

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

§ 47-35-15. MISCELLANEOUS PROVISIONS.

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

DISPOSAL

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

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

TREATMENT

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

EMERGENCY PERMITS

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

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

MISCELLANEOUS

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

APPENDIX 1

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

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

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

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

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

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

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

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

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

1.4. If a small quantity generator treats (other than by elementary neutralization or other excluded methods), accumulates or stores for longer than the time frames set forth in paragraph a.5 of this Appendix or disposes of hazardous waste on site, the

small quantity generator becomes subject to the expanded requirements of 40 CFR Parts 263, 264, 265, 266, 268 and 270 as well as any other applicable parts.

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

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

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

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

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

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

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

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

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

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

1.8. If a small quantity generator closes (permanently removes from service) a container or tank storage area 40 CFR § 265.114

must be followed to insure that no contamination exists or remains at the storage location.

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

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

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

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

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

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

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

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

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

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

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

1.11.d. If a copy of the manifest with the handwritten signature of the owner or operator of the designated facility has

not been received by the generator within 60 days of the date the waste was accepted by the initial transporter, the generator must submit a legible copy of the manifest with some indication that the generator has not received confirmation of delivery to the chief.

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

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

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

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

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

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

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

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

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

operating, that employee must have immediate access to a device referenced by part a.12.A.2. of this Appendix.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2. The conditionally exempt small quantity generator must make a proper hazardous waste determination as specified in paragraph a.2. of this Appendix. When determining the amount of hazardous waste generated, a generator need only include those wastes that are generated on site prior to reclamation, and are not excluded under 40 CFR part 261.

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

2.4. A conditionally exempt small quantity generator may accumulate up to 1000 kilograms of hazardous waste on site before becoming subject to the requirements of paragraph a.5. of this Appendix with the exception that:

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

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

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

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

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

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

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

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

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

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

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

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SENATE BILL NO. 174

(By Senators Ross, Anderson, Boley,
Buckalew, Grubb and Macnaughtan)

[Introduced January 29, 1996; referred
to the Committee on

NATURAL RESOURCES

FINANCE

THE JUDICIARY

47-35

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

16 Be it enacted by the Legislature of West Virginia:

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

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

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

24 (a) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 four, article five, chapter twenty-two, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (requirements for determining conformity of
10 general federal actions to applicable air quality
11 implementation plans (general conformity), 45 CSR 35), are
12 authorized.

13 (b) The legislative rules filed in the state register
14 on the twelfth day of August, one thousand nine hundred
15 ninety-four, authorized under the authority of section
16 four, article five, chapter twenty-two, of this code,
17 modified by the division of environmental protection to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the
20 twenty-third day of November, one thousand nine hundred
21 ninety-four, relating to the division of environmental
22 protection (emission standards for hazardous air pollutants
23 pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

24 (c) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 five, article twenty, chapter sixteen, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (standards of performance for new stationary
10 sources, 45 CSR 16), are authorized with the amendment set
11 forth below:

12 "On page two, section 4, subsection 4.1, subdivision
13 4.1.i, by striking out 'Part 60.195(b)' and inserting in
14 lieu thereof 'Part 60.194(d)';

15 On page two, section 4, subsection 4.1., subdivision
16 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
17 in lieu thereof 'Part 60.335(f)(1)';

18 And,

19 On page two, section 4, after subdivision 'k', by
20 inserting a new subdivision to read as follows:

21 '1. Part 60.335(f)(1).'

22 (d) The legislative rules filed in the state register
23 on the fifteenth day of August, one thousand nine hundred
24 ninety-four, authorized under the authority of section

1 four, article five, chapter twenty-two, of this code,
2 modified by the division of environmental protection to
3 meet the objections of the legislative rule-making review
4 committee and refiled in the state register on the
5 nineteenth day of December, one thousand nine hundred
6 ninety-four, relating to the division of environmental
7 protection (permits for construction and major modification
8 of major stationary sources of air pollution for the
9 prevention of significant deterioration, 45 CSR 14), are
10 authorized.

11 (e) The legislative rules filed in the state register
12 on the twelfth day of August, one thousand nine hundred
13 ninety-four, authorized under the authority of section
14 four, article five, chapter twenty-two, of this code,
15 modified by the division of environmental protection to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-third day of November, one thousand nine hundred
19 ninety-four, relating to the division of environmental
20 protection (requirements for determining conformity of
21 transportation plans, programs and projects developed,
22 funded or approved under title 23 U.S.C. or the federal
23 transit act, to applicable air quality implementation
24 plans, 45 CSR 36), are authorized.

1 (f) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 ninth day of December, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (to prevent and control air pollution from the
11 operation of coal preparation plants and coal handling
12 operations, 45 CSR 5), are authorized.

13 (g) The legislative rules filed in the state register
14 on the thirteenth day of September, one thousand nine
15 hundred ninety-four, authorized under the authority of
16 section four, article five, chapter twenty-two, of this
17 code, modified by the division of environmental protection
18 to meet the objections of the legislative rule-making
19 review committee and refiled in the state register on the
20 twelfth day of January, one thousand nine hundred
21 ninety-five, relating to the division of environmental
22 protection (to prevent and control air pollution from
23 hazardous waste treatment, storage or disposal facilities,
24 45 CSR 25), are authorized.

1 (h) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the
8 twenty-third day of November, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (acid rain provisions and permits, 45 CSR 33),
11 are authorized.

12 (i) The legislative rules filed in the state register
13 on the twelfth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section two,
15 article one, chapter twenty-two, of this code, modified by
16 the division of environmental protection to meet the
17 objections of the legislative rule-making review committee
18 and refiled in the state register on the twenty-third day
19 of November, one thousand nine hundred ninety-four,
20 relating to the division of environmental protection
21 (emission standards for hazardous air pollutants pursuant
22 to 40 CFR Part 61, 45 CSR 15), are authorized.

23 (j) The legislative rules filed in the state register
24 on the twelfth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section
2 four, article five, chapter twenty-two, of this code,
3 modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 twenty-third day of November, one thousand nine hundred
7 ninety-four, relating to the division of environmental
8 protection (provisions for determination of compliance with
9 air quality management rules, 45 CSR 38), are authorized.

10 (k) The legislative rules filed in the state register
11 on the twelfth day of August, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 five, article twenty, chapter sixteen, of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the
17 twenty-third day of November, one thousand nine hundred
18 ninety-four, relating to the division of environmental
19 protection (to prevent and control air pollution from
20 combustion of refuse, 45 CSR 6), are authorized.

21 (l) The legislative rules filed in the state register
22 on the fifteenth day of August, one thousand nine hundred
23 ninety-four, authorized under the authority of section
24 four, article fourteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the fourth
4 day of January, one thousand nine hundred ninety-five,
5 relating to the division of environmental protection (dam
6 safety, 47 CSR 34), are authorized with the amendments set
7 forth below:

8 On page 9, section §47-34-3, by striking out
9 3.5.2.c.A, and substituting therefor the following:

10 "3.5.2.c.A. An impoundment exceeding forty (40) feet
11 in height or four hundred (400) acre-feet storage volume
12 shall not be classified as a Class 3 dam."

13 On pages 17 and 18, section §47-34-7, at the end of
14 section 7.1.1.b.C. by adding the following:

15 "The design precipitation for a Class 3 dam may be
16 reduced based on Risk Assessment pursuant to paragraph
17 3.5.4 of this rule, but in no case to less than a P100
18 rainfall of six (6) hours in duration."

19 On page 40, section §47-34-13, by striking out section
20 13.2 and substituting therefor the following:

21 "Performance Requirements - All dams completed before
22 July 1, 1973, shall meet the applicable design requirements
23 of Section 7 of this rule. Those dams which do not meet
24 the applicable design requirement of Section 7 of this rule

1 shall be modified, breached, removed, or properly abandoned
2 pursuant to the provisions of this rule. In developing the
3 required plans, specifications, and documentation necessary
4 to bring the structure into conformity with section 7 of
5 this rule, the design engineer may consider in his
6 submitted analyses, peculiarities and local conditions for
7 each impounding structure with recognition of the many
8 factors involved, some of which may not be precisely known.
9 Existing construction documentation and the historical
10 performance of the structure including documented storms
11 and spillway flows may be considered by the engineer as
12 part of the evaluation of the structure. Upon approval by
13 the Director of the plans, specifications, and
14 documentation submitted by the engineer, the Director may
15 issue a certificate of approval."

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

1 (regulations governing environmental laboratories
2 certification and standards of performance, 47 CSR 32), are
3 authorized.

4 (n) The legislative rules filed in the state register
5 on the twenty-eighth day of February, one thousand nine
6 hundred ninety-four, authorized under the authority of
7 section three, article two, chapter twenty-two-c, of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 twenty-eighth day of July, one thousand nine hundred
12 ninety-four, relating to the division of environmental
13 protection (state water pollution control revolving fund
14 program, 47 CSR 31); are authorized.

15 (o) The legislative rules filed in the state register
16 on the fifteenth day of August, one thousand nine hundred
17 ninety-four, authorized under the authority of section six,
18 article seventeen, chapter twenty-two, of this code,
19 relating to the division of environmental protection
20 (underground storage tanks, 47 CSR 36), are authorized.

21 (p) The legislative rules filed in the state register
22 on the ~~fifteenth~~ thirty-first day of ~~August~~ July, one
23 thousand nine hundred ~~ninety-four~~ ninety-five, authorized
24 under the authority of section six, article eighteen,

1 chapter twenty-two, of this code, modified by the division
2 of environmental protection to meet the objections of the
3 legislative rule-making review committee and refiled in the
4 state register on the ~~thirteenth~~ eighteenth day of January,
5 one thousand nine hundred ~~ninety-five~~ ninety-six, relating
6 to the division of environmental protection (hazardous
7 waste management regulations, 47 CSR 35), are authorized.

8 (q) The legislative rules filed in the state register
9 on the twenty-second day of July, one thousand nine hundred
10 ninety-four, authorized under the authority of section
11 four, article three, chapter twenty-two, of this code,
12 modified by the division of environmental protection to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the
15 twenty-ninth day of August, one thousand nine hundred
16 ninety-four, relating to the division of environmental
17 protection (standards for certification of blasters-surface
18 coal mines, 38 CSR 2C), are authorized with the amendments
19 set forth below:

20 On page 4, section 38.2C.4, after the words "Form
21 MR-30-TR." by inserting a second paragraph to read as
22 follows:

23 "In lieu of completing the training program, the
24 applicant for certification or re-certification may

1 complete a self-study course using the study guide and
2 other materials available from the Division of
3 Environmental Protection."

4 On page 8, subsection 8.2, after the words "refresher
5 training course" by inserting the phrase "or complete the
6 self-study course."

7 On page 8 at subsection 10.1 by striking out the
8 phrase "a cessation order and/or take other action as
9 provided in West Virginia Code 22-3-16 and 17" and the
10 phrase "the provisions of West Virginia Code 22-3-1 et
11 seq., rules promulgated under that article, or".

12 On page 9, subsection 11.1, by striking out the
13 subsection and inserting in lieu thereof a new subsection
14 to read as follows: "11.1. **Suspension** - Upon service of a
15 written notice of violation by the Director to a certified
16 blaster, the Director may suspend his or her certification.
17 Prior to the issuance of such an order, the certified
18 blaster shall be granted a hearing before the Director to
19 show cause why his or her certification should not be
20 suspended."

21 On page 9, subsection 11.2, by striking out the phrase
22 "or cessation order" in the first sentence.

23 On page 9, Section 12, by striking out the phrase
24 "cessation order".

1 (r) The legislative rules filed in the state register
2 on the fifteenth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 nine, article three, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the sixth
8 day of January, one thousand nine hundred ninety-five,
9 relating to the division of environmental protection (rules
10 and regulations relating to abandoned mine lands and
11 reclamation, 38 CSR 2D), are authorized.

12 (s) The Legislature hereby authorizes and directs the
13 division of environmental protection to promulgate the
14 legislative rules filed in the state register on February,
15 seventh, one thousand nine hundred ninety-five, authorized
16 under the authority of section five, article twenty,
17 chapter sixteen, of this code, relating to the division of
18 environmental protection (prevention and control of
19 particulate air pollution from combustion of fuel in
20 indirect heat exchangers, 45 CSR 2), effective the first
21 day of May, one thousand nine hundred ninety-five, with the
22 amendments set forth below:

23 On page eight, section 3.4(e) after the word "operated" by
24 adding the words "at normal operating loads";

1 And,

2 On page thirteen, section 9.4 by striking the words
3 "monthly or", and, following the words "quarterly basis" by
4 striking the word "as"; and by inserting the words "unless
5 otherwise" following the words "quarterly basis".

6 And,

7 On page thirteen, by creating a new section, designated
8 section "45.2-10. Variances.

9 10.1. In the event of an unavoidable shortage of fuel
10 having characteristics or specifications necessary for a
11 fuel burning unit to comply with the opacity standards set
12 forth in section 3 or any emergency situation or condition
13 creating a threat to public safety or welfare, the Director
14 may grant an exception to the otherwise applicable visible
15 emission standards for a period not to exceed fifteen (15)
16 days, provided that visible emissions during the exception
17 period do not exceed a maximum six (6) minute average of
18 thirty (30) percent and that a reasonable demonstration is
19 made by the owner or operator that the emission standards
20 under section 4 of this rule will not be exceeded during
21 the exemption period."

22 10.2. In the event a fuel burning unit employing a
23 flue gas desulphurization system must by-pass such system
24 because of necessary planned or unplanned maintenance,

1 visible emissions may not exceed twenty percent (20%)
2 opacity during such period of maintenance. The Director
3 may require advance notice of necessary planned
4 maintenance, including a description of the necessity of
5 the maintenance activity and its expected duration and may
6 limit the duration of the variance or the amount of the
7 excess opacity exception herein allowed. The Director
8 shall be notified of unplanned maintenance and may limit
9 the duration of the variance or the amount of excess
10 opacity exception allowed during unplanned maintenance.

11 And, by renumbering subsequent sections.

12 (t) The legislative rules filed in the state register
13 on the nineteenth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section
15 four, article three, chapter twenty-two, of this code,
16 relating to the division of environmental protection
17 (surface mining and reclamation regulations, 38 CSR 2), are
18 authorized "with the amendments set forth below"

19 On pages 2 and 3, by striking out subsections 1.6, 1.7
20 and 1.8 in their entirety;

21 On page 6, by inserting a new subsection 2.20, to read
22 as follows, and renumbering subsequent subsections;

23 "Chemical Treatment means - the treatment of water
24 from a surface coal mining operation using chemical

1 reagents such as but not limited to sodium hydroxide,
2 calcium carbonate, or anhydrous ammonia for purposes of
3 meeting applicable state and federal effluent limitations.
4 Chemical treatment does not include passive treatment
5 systems such as but not limited to limestone drains,
6 wetlands, alkaline addition, application of flyash,
7 agricultural lime, or injection of flyash, limestone, or
8 other minerals into underground coal operations."

9 On page 16, section 2, by striking out subsection 2.92
10 and renumbering the subsequent subsections.

11 On page 25, by striking the second paragraph of
12 subsection 3.1 (o) and inserting in lieu thereof a new
13 second paragraph 3.1 of subsection 3.1 (o), to read as
14 follows: "Any permit application which references an
15 approved centralized ownership and control file may be
16 determined to be complete and accurate for the purposes of
17 this subsection. Each centralized ownership and control
18 file shall at a minimum:"

19 On page 63, by striking out subsection 3.25 (e).

20 On page 63, by striking out the first sentence in
21 subsection 3.26, and inserting in lieu thereof the
22 following:

23 "(a) All changes including name changes, replacements,
24 and additions to the ownership or control data relative to

1 a permittee or assignee who will function as an operator
2 pursuant to the provisions of paragraph (c) of subsection
3 3.25 of this rule shall be reported to the Director."

4 On page 64, after subsection 3.26 (a) (5) by inserting
5 a new subsection 3.26 (a) (6) to read as follows:

6 "(6) In the event that a permittee or operator has
7 incurred no changes in its ownership and control
8 information and therefore has not been obligated to file
9 a report within any consecutive twelve-month period, that
10 permittee or operator is required to notify the Director in
11 writing that no changes to the information required by
12 paragraphs (b), (c), (d) and (i) of subsection 3.1 of this
13 rule have occurred."

14 On page 64, by striking out subsection 3.27 (a) and
15 inserting in lieu thereof the following:

16 "(a) All active surface mining operations shall be
17 subject to the renewal requirements and provisions for
18 issuance of a renewal discussed in Section 19 of the Act:
19 *Provided*, That the Director may waive the requirement for
20 renewal if the permittee certifies in writing that all coal
21 extraction is completed, that all backfilling and regrading
22 will be completed within sixty (60) days prior to the
23 expiration date of the permit, and that an application for
24 Phase I bond release will be filed prior to the expiration

1 date of the permit. Failure of the permittee complete
2 backfilling and regrading within sixty (60) days prior to
3 the expiration date of the permit will nullify the waiver.

4 Those operations which have been granted inactive
5 status in accordance with subsection 14.11 of this rule
6 shall also be subject to the renewal requirements of
7 Section 19 of the Act.

8 Applications for renewal shall be filed on forms
9 provided by the Director and shall contain at a minimum the
10 following information:"

11 On page 79, by striking out subsection 3.32 (i) and
12 renumbering the remaining subsections.

13 On page 80, subsection 3.34 (b) after the word
14 "criteria" by inserting the words "paragraph (b) of
15 subsection 3.32 of this section";

16 On page 80, by striking out subsection 3.34 (b) (3)
17 and substituting therefor a new subsection 3.34 (b) (3), to
18 read as follows: "(3) The permittee was linked to a
19 violation, penalty or fee through ownership or control,
20 under the violation review criteria, paragraph (b) of
21 subsection 3.32 of this section at the time the permit was
22 issued and an ownership or control link between the
23 permittee and the person responsible for the violation,
24 penalty or fee still exists, or when the link was severed

1 the permittee continues to be responsible for the
2 violation, penalty or fee."

3 On page 82, by striking out subsection 3.34 (g) and
4 substituting therefor a new subparagraph (g) to read as
5 follows:

6 "(g) For purposes of this subsection, a permit is
7 issued when it is originally approved, as well as when a
8 transfer, assignment, or sale of permit rights is approved
9 pursuant to paragraphs (a) or (c), subsection 3.25 of this
10 rule, or where a permit is revised pursuant to subsection
11 3.26 of this rule."

12 On page 86, at the end of subsection 4.4, by adding
13 the following sentence: "Prospecting roads are to be
14 designed, constructed, maintained, and reclaimed in
15 accordance with the provisions of subsection 13.6 of this
16 rule."

17 On page 88, by inserting a new subsection 4.7 (a) (1)
18 to read as follows: (1) Minimize downstream sedimentation
19 and flooding and renumbering the remaining subsections.

20 On page 92, subsection 4.12, by inserting a new
21 sentence between the second and third sentence which reads
22 as follows: "Where the certification statement indicates a
23 change from the design standards or construction
24 requirements approved in the permit, such changes will be

1 documented in as-built plans and submitted for approval to
2 the Director as a permit revision."

3 On Page 148, section 11.6 (a) in the underscored
4 language, after the word, "completed" by inserting the
5 words "or nearly completed".

6 On Page 223, by striking out subsection 14.14 (g) (8)
7 and inserting in lieu thereof a new subsection 14.14 (g)
8 (8), to read as follows: "(8) Surface water runoff from
9 areas above and adjacent to the fill shall be diverted into
10 properly designed and constructed stabilized diversion
11 channels which have been designed using best current
12 technology to safely pass the peak runoff from a 100 year,
13 24-hour precipitation event. The channel shall be designed
14 and constructed to ensure stability of the fill, control
15 erosion, and minimize water infiltration into the fill."

16 On Page 232, by inserting a new subsection, designated
17 subsection 14.19 (d) to read as follows: "(d) Timber from
18 clearing and grubbing operations may be wind-rowed below
19 the projected toe of the outslope in a manner that will
20 provide shelter and habitat for game and non-game wildlife
21 and provide for enhanced sediment control. These materials
22 may not be placed in natural water courses or where they
23 will be covered by spoil material at the toe of the
24 outslope. The wind-rows must be of relatively uniform

1 height and width and must be more or less evenly
2 distributed along the lower reaches and within the permit
3 area."

4 On Page 240, subsection 17.1, in the first sentence,
5 after the words "mining and reclamation," by striking out
6 the remainder of the paragraph and substituting therefor
7 the following: "required by the Act and these Rules,
8 including the engineering analyses and designs; the
9 development of cross-section maps and plans; the geologic
10 drilling and statement of results of test borings and core
11 samplings; preblast surveys; the collection of
12 site-specific resource information and production of
13 protection and enhancement plans for fish and wildlife
14 habitats and other environmental values; and the collection
15 of archaeological and historical information; and any other
16 archaeological and historical information required by the
17 federal department of the interior and the preparation of
18 plans that may be necessitated thereby; and the director
19 shall provide or assume the cost of training coal operators
20 that meet the qualifications concerning the preparation of
21 permit applications and compliance with the regulatory
22 program, and shall ensure that qualified coal operators are
23 aware of the assistance available under this section.

24 On Page 240, subsection 17.1, after the first

1 paragraph by inserting a new paragraph, to read as follows:
2 "The Director will develop a procedure for the interstate
3 coordination and exchange of information collected under
4 the Small Operators Assistance Program."

5 On Page 241, by striking out subsection 17.4 in its
6 entirety and substituting therefor the following: "17.4
7 Request for Assistance. Each applicant requesting
8 assistance shall provide information on forms provided by
9 the director in an application that shall be clear and
10 concise and shall be provided in a format prescribed by the
11 Director and/or a format required by the Federal Office of
12 Surface Mining Reclamation and Enforcement."

13 On Page 249, subsection 17.7 (a) (4), after the words
14 "twelve (12) month period" by striking the remainder of the
15 sentence and inserting in lieu thereof the words
16 "immediately following permit issuance."

17 On page 273, subsection 20.6 (a), after the word
18 "first" by striking out the words "thirty (30)" and
19 inserting in lieu thereof the word "fifteen".

20 On page 273, subsection 20.6 (c), after the words
21 "date of the" by striking out the words "Assessment Officer
22 receiving the
23 finding specified in paragraph (a) of this subsection." and
24 inserting in lieu thereof the words "issuance of a notice

1 or order";

2 On page 274, subsection 20.6 (d), by striking out the
3 first sentence, and inserting in lieu thereof the
4 following: "The time and place of an informal assessment
5 conference shall be posted at the Department of
6 Environmental Protection Office nearest to the operation.

7

8 NOTE: The purpose of this bill is to authorize the
9 Division of Environmental Protection to promulgate
10 legislative rules relating to hazardous waste management.

11

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

4248

H. B. 4248

(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)

(Introduced January 29, 1996 ; referred to the
Committee on the Judiciary)

47-35

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

Be it enacted by the Legislature of West Virginia:

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

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

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

(a) The legislative rules filed in the state register

4248

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 four, article five, chapter twenty-two, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (requirements for determining conformity of
10 general federal actions to applicable air quality
11 implementation plans (general conformity), 45 CSR 35), are
12 authorized.

13 (b) The legislative rules filed in the state register
14 on the twelfth day of August, one thousand nine hundred
15 ninety-four, authorized under the authority of section
16 four, article five, chapter twenty-two, of this code,
17 modified by the division of environmental protection to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the
20 twenty-third day of November, one thousand nine hundred
21 ninety-four, relating to the division of environmental
22 protection (emission standards for hazardous air pollutants
23 pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

24 (c) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 five, article twenty, chapter sixteen, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (standards of performance for new stationary
10 sources, 45 CSR 16), are authorized with the amendment set
11 forth below:

12 "On page two, section 4, subsection 4.1, subdivision
13 4.1.i, by striking out 'Part 60.195(b)' and inserting in
14 lieu thereof 'Part 60.194(d)';

15 On page two, section 4, subsection 4.1., subdivision
16 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
17 in lieu thereof 'Part 60.335(f)(1)';

18 And,

19 On page two, section 4, after subdivision 'k', by
20 inserting a new subdivision to read as follows:

21 'l. Part 60.335(f)(1).'

22 (d) The legislative rules filed in the state register
23 on the fifteenth day of August, one thousand nine hundred
24 ninety-four, authorized under the authority of section

1 four, article five, chapter twenty-two, of this code,
2 modified by the division of environmental protection to
3 meet the objections of the legislative rule-making review
4 committee and refiled in the state register on the
5 nineteenth day of December, one thousand nine hundred
6 ninety-four, relating to the division of environmental
7 protection (permits for construction and major modification
8 of major stationary sources of air pollution for the
9 prevention of significant deterioration, 45 CSR 14), are
10 authorized.

11 (e) The legislative rules filed in the state register
12 on the twelfth day of August, one thousand nine hundred
13 ninety-four, authorized under the authority of section
14 four, article five, chapter twenty-two, of this code,
15 modified by the division of environmental protection to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-third day of November, one thousand nine hundred
19 ninety-four, relating to the division of environmental
20 protection (requirements for determining conformity of
21 transportation plans, programs and projects developed,
22 funded or approved under title 23 U.S.C. or the federal
23 transit act, to applicable air quality implementation
24 plans, 45 CSR 36), are authorized.

1 (f) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 ninth day of December, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (to prevent and control air pollution from the
11 operation of coal preparation plants and coal handling
12 operations, 45 CSR 5), are authorized.

13 (g) The legislative rules filed in the state register
14 on the thirteenth day of September, one thousand nine
15 hundred ninety-four, authorized under the authority of
16 section four, article five, chapter twenty-two, of this
17 code, modified by the division of environmental protection
18 to meet the objections of the legislative rule-making
19 review committee and refiled in the state register on the
20 twelfth day of January, one thousand nine hundred
21 ninety-five, relating to the division of environmental
22 protection (to prevent and control air pollution from
23 hazardous waste treatment, storage or disposal facilities,
24 45 CSR 25), are authorized.

1 (h) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the
8 twenty-third day of November, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (acid rain provisions and permits, 45 CSR 33),
11 are authorized.

12 (i) The legislative rules filed in the state register
13 on the twelfth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section two,
15 article one, chapter twenty-two, of this code, modified by
16 the division of environmental protection to meet the
17 objections of the legislative rule-making review committee
18 and refiled in the state register on the twenty-third day
19 of November, one thousand nine hundred ninety-four,
20 relating to the division of environmental protection
21 (emission standards for hazardous air pollutants pursuant
22 to 40 CFR Part 61, 45 CSR 15), are authorized.

23 (j) The legislative rules filed in the state register
24 on the twelfth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section
2 four, article five, chapter twenty-two, of this code,
3 modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 twenty-third day of November, one thousand nine hundred
7 ninety-four, relating to the division of environmental
8 protection (provisions for determination of compliance with
9 air quality management rules, 45 CSR 38), are authorized.

10 (k) The legislative rules filed in the state register
11 on the twelfth day of August, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 five, article twenty, chapter sixteen, of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the
17 twenty-third day of November, one thousand nine hundred
18 ninety-four, relating to the division of environmental
19 protection (to prevent and control air pollution from
20 combustion of refuse, 45 CSR 6), are authorized.

21 (l) The legislative rules filed in the state register
22 on the fifteenth day of August, one thousand nine hundred
23 ninety-four, authorized under the authority of section
24 four, article fourteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the fourth
4 day of January, one thousand nine hundred ninety-five,
5 relating to the division of environmental protection (dam
6 safety, 47 CSR 34), are authorized with the amendments set
7 forth below:

8 On page 9, section §47-34-3, by striking out
9 3.5.2.c.A, and substituting therefor the following:

10 "3.5.2.c.A. An impoundment exceeding forty (40) feet
11 in height or four hundred (400) acre-feet storage volume
12 shall not be classified as a Class 3 dam."

13 On pages 17 and 18, section §47-34-7, at the end of
14 section 7.1.1.b.C. by adding the following:

15 "The design precipitation for a Class 3 dam may be
16 reduced based on Risk Assessment pursuant to paragraph
17 3.5.4 of this rule, but in no case to less than a P100
18 rainfall of six (6) hours in duration."

19 On page 40, section §47-34-13, by striking out section
20 13.2 and substituting therefor the following:

21 "Performance Requirements - All dams completed before
22 July 1, 1973, shall meet the applicable design requirements
23 of Section 7 of this rule. Those dams which do not meet
24 the applicable design requirement of Section 7 of this rule

1 shall be modified, breached, removed, or properly abandoned
2 pursuant to the provisions of this rule. In developing the
3 required plans, specifications, and documentation necessary
4 to bring the structure into conformity with section 7 of
5 this rule, the design engineer may consider in his
6 submitted analyses, peculiarities and local conditions for
7 each impounding structure with recognition of the many
8 factors involved, some of which may not be precisely known.
9 Existing construction documentation and the historical
10 performance of the structure including documented storms
11 and spillway flows may be considered by the engineer as
12 part of the evaluation of the structure. Upon approval by
13 the Director of the plans, specifications, and
14 documentation submitted by the engineer, the Director may
15 issue a certificate of approval."

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

1 (regulations governing environmental laboratories
2 certification and standards of performance, 47 CSR 32), are
3 authorized.

4 (n) The legislative rules filed in the state register
5 on the twenty-eighth day of February, one thousand nine
6 hundred ninety-four, authorized under the authority of
7 section three, article two, chapter twenty-two-c, of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 twenty-eighth day of July, one thousand nine hundred
12 ninety-four, relating to the division of environmental
13 protection (state water pollution control revolving fund
14 program, 47 CSR 31), are authorized.

15 (o) The legislative rules filed in the state register
16 on the fifteenth day of August, one thousand nine hundred
17 ninety-four, authorized under the authority of section six,
18 article seventeen, chapter twenty-two, of this code,
19 relating to the division of environmental protection
20 (underground storage tanks, 47 CSR 36), are authorized.

21 (p) The legislative rules filed in the state register
22 on the ~~fifteenth~~ thirty-first day of ~~August~~ July, one
23 thousand nine hundred ~~ninety-four~~ ninety-five, authorized
24 under the authority of section six, article eighteen,

1 chapter twenty-two, of this code, modified by the division
2 of environmental protection to meet the objections of the
3 legislative rule-making review committee and refiled in the
4 state register on the ~~thirteenth~~ eighteenth day of January,
5 one thousand nine hundred ~~ninety-five~~ ninety-six, relating
6 to the division of environmental protection (hazardous
7 waste management regulations, 47 CSR 35), are authorized.

8 (q) The legislative rules filed in the state register
9 on the twenty-second day of July, one thousand nine hundred
10 ninety-four, authorized under the authority of section
11 four, article three, chapter twenty-two, of this code,
12 modified by the division of environmental protection to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the
15 twenty-ninth day of August, one thousand nine hundred
16 ninety-four, relating to the division of environmental
17 protection (standards for certification of blasters-surface
18 coal mines, 38 CSR 2C), are authorized with the amendments
19 set forth below:

20 On page 4, section 38.2C.4, after the words "Form
21 MR-30-TR." by inserting a second paragraph to read as
22 follows:

23 "In lieu of completing the training program, the
24 applicant for certification or re-certification may

1 complete a self-study course using the study guide and
2 other materials available from the Division of
3 Environmental Protection."

4 On page 8, subsection 8.2, after the words "refresher
5 training course" by inserting the phrase "or complete the
6 self-study course."

7 On page 8 at subsection 10.1 by striking out the
8 phrase "a cessation order and/or take other action as
9 provided in West Virginia Code 22-3-16 and 17" and the
10 phrase "the provisions of West Virginia Code 22-3-1 et
11 seq., rules promulgated under that article, or".

12 On page 9, subsection 11.1, by striking out the
13 subsection and inserting in lieu thereof a new subsection
14 to read as follows: "11.1. Suspension - Upon service of a
15 written notice of violation by the Director to a certified
16 blaster, the Director may suspend his or her certification.
17 Prior to the issuance of such an order, the certified
18 blaster shall be granted a hearing before the Director to
19 show cause why his or her certification should not be
20 suspended."

21 On page 9, subsection 11.2, by striking out the phrase
22 "or cessation order" in the first sentence.

23 On page 9, Section 12, by striking out the phrase
24 "cessation order".

1 (r) The legislative rules filed in the state register
2 on the fifteenth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 nine, article three, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the sixth
8 day of January, one thousand nine hundred ninety-five,
9 relating to the division of environmental protection (rules
10 and regulations relating to abandoned mine lands and
11 reclamation, 38 CSR 2D), are authorized.

12 (s) The Legislature hereby authorizes and directs the
13 division of environmental protection to promulgate the
14 legislative rules filed in the state register on February,
15 seventh, one thousand nine hundred ninety-five, authorized
16 under the authority of section five, article twenty,
17 chapter sixteen, of this code, relating to the division of
18 environmental protection (prevention and control of
19 particulate air pollution from combustion of fuel in
20 indirect heat exchangers, 45 CSR 2), effective the first
21 day of May, one thousand nine hundred ninety-five, with the
22 amendments set forth below:

23 On page eight, section 3.4(e) after the word "operated" by
24 adding the words "at normal operating loads";

1 And,

2 On page thirteen, section 9.4 by striking the words
3 "monthly or", and, following the words "quarterly basis" by
4 striking the word "as"; and by inserting the words "unless
5 otherwise" following the words "quarterly basis".

6 And,

7 On page thirteen, by creating a new section, designated
8 section "45.2.10. Variances.

9 10.1. In the event of an unavoidable shortage of fuel
10 having characteristics or specifications necessary for a
11 fuel burning unit to comply with the opacity standards set
12 forth in section 3 or any emergency situation or condition
13 creating a threat to public safety or welfare, the Director
14 may grant an exception to the otherwise applicable visible
15 emission standards for a period not to exceed fifteen (15)
16 days, provided that visible emissions during the exception
17 period do not exceed a maximum six (6) minute average of
18 thirty (30) percent and that a reasonable demonstration is
19 made by the owner or operator that the emission standards
20 under section 4 of this rule will not be exceeded during
21 the exemption period."

22 10.2. In the event a fuel burning unit employing a
23 flue gas desulphurization system must by-pass such system
24 because of necessary planned or unplanned maintenance,

1 visible emissions may not exceed twenty percent (20%)
2 opacity during such period of maintenance. The Director
3 may require advance notice of necessary planned
4 maintenance, including a description of the necessity of
5 the maintenance activity and its expected duration and may
6 limit the duration of the variance or the amount of the
7 excess opacity exception herein allowed. The Director
8 shall be notified of unplanned maintenance and may limit
9 the duration of the variance or the amount of excess
10 opacity exception allowed during unplanned maintenance.

11 And, by renumbering subsequent sections.

12 (t) The legislative rules filed in the state register
13 on the nineteenth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section
15 four, article three, chapter twenty-two, of this code,
16 relating to the division of environmental protection
17 (surface mining and reclamation regulations, 38 CSR 2), are
18 authorized "with the amendments set forth below"

19 On pages 2 and 3, by striking out subsections 1.6, 1.7
20 and 1.8 in their entirety;

21 On page 6, by inserting a new subsection 2.20, to read
22 as follows, and renumbering subsequent subsections;

23 "Chemical Treatment means - the treatment of water
24 from a surface coal mining operation using chemical

1 reagents such as but not limited to sodium hydroxide,
2 calcium carbonate, or anhydrous ammonia for purposes of
3 meeting applicable state and federal effluent limitations.
4 Chemical treatment does not include passive treatment
5 systems such as but not limited to limestone drains,
6 wetlands, alkaline addition, application of flyash,
7 agricultural lime, or injection of flyash, limestone, or
8 other minerals into underground coal operations."

9 On page 16, section 2, by striking out subsection 2.92
10 and renumbering the subsequent subsections.

11 On page 25, by striking the second paragraph of
12 subsection 3.1 (o) and inserting in lieu thereof a new
13 second paragraph 3.1 of subsection 3.1 (o), to read as
14 follows: "Any permit application which references an
15 approved centralized ownership and control file may be
16 determined to be complete and accurate for the purposes of
17 this subsection. Each centralized ownership and control
18 file shall at a minimum:"

19 On page 63, by striking out subsection 3.25 (e).

20 On page 63, by striking out the first sentence in
21 subsection 3.26, and inserting in lieu thereof the
22 following:

23 "(a) All changes including name changes, replacements,
24 and additions to the ownership or control data relative to

1 a permittee or assignee who will function as an operator
2 pursuant to the provisions of paragraph (c) of subsection
3 3.25 of this rule shall be reported to the Director."

4 On page 64, after subsection 3.26 (a) (5) by inserting
5 a new subsection 3.26 (a) (6) to read as follows:

6 "(6) In the event that a permittee or operator has
7 incurred no changes in its ownership and control
8 information and therefore has not been obligated to file
9 a report within any consecutive twelve-month period, that
10 permittee or operator is required to notify the Director in
11 writing that no changes to the information required by
12 paragraphs (b), (c), (d) and (i) of subsection 3.1 of this
13 rule have occurred."

14 On page 64, by striking out subsection 3.27 (a) and
15 inserting in lieu thereof the following:

16 "(a) All active surface mining operations shall be
17 subject to the renewal requirements and provisions for
18 issuance of a renewal discussed in Section 19 of the Act:
19 *Provided*, That the Director may waive the requirement for
20 renewal if the permittee certifies in writing that all coal
21 extraction is completed, that all backfilling and regrading
22 will be completed within sixty (60) days prior to the
23 expiration date of the permit, and that an application for
24 Phase I bond release will be filed prior to the expiration

1 date of the permit. Failure of the permittee complete
2 backfilling and regrading within sixty (60) days prior to
3 the expiration date of the permit will nullify the waiver.

4 Those operations which have been granted inactive
5 status in accordance with subsection 14.11 of this rule
6 shall also be subject to the renewal requirements of
7 Section 19 of the Act.

8 Applications for renewal shall be filed on forms
9 provided by the Director and shall contain at a minimum the
10 following information:"

11 On page 79, by striking out subsection 3.32 (i) and
12 renumbering the remaining subsections.

13 On page 80, subsection 3.34 (b) after the word
14 "criteria" by inserting the words "paragraph (b) of
15 subsection 3.32 of this section";

16 On page 80, by striking out subsection 3.34 (b) (3)
17 and substituting therefor a new subsection 3.34 (b) (3), to
18 read as follows: "(3) The permittee was linked to a
19 violation, penalty or fee through ownership or control,
20 under the violation review criteria, paragraph (b) of
21 subsection 3.32 of this section at the time the permit was
22 issued and an ownership or control link between the
23 permittee and the person responsible for the violation,
24 penalty or fee still exists, or when the link was severed

1 the permittee continues to be responsible for the
2 violation, penalty or fee."

3 On page 82, by striking out subsection 3.34 (g) and
4 substituting therefor a new subparagraph (g) to read as
5 follows:

6 "(g) For purposes of this subsection, a permit is
7 issued when it is originally approved, as well as when a
8 transfer, assignment, or sale of permit rights is approved
9 pursuant to paragraphs (a) or (c), subsection 3.25 of this
10 rule, or where a permit is revised pursuant to subsection
11 3.26 of this rule."

12 On page 86, at the end of subsection 4.4, by adding
13 the following sentence: "Prospecting roads are to be
14 designed, constructed, maintained, and reclaimed in
15 accordance with the provisions of subsection 13.6 of this
16 rule."

17 On page 88, by inserting a new subsection 4.7 (a) (1)
18 to read as follows: (1) Minimize downstream sedimentation
19 and flooding and renumbering the remaining subsections.

20 On page 92, subsection 4.12, by inserting a new
21 sentence between the second and third sentence which reads
22 as follows: "Where the certification statement indicates a
23 change from the design standards or construction
24 requirements approved in the permit, such changes will be

1 documented in as-built plans and submitted for approval to
2 the Director as a permit revision."

3 On Page 148, section 11.6 (a) in the underscored
4 language, after the word, "completed" by inserting the
5 words "or nearly completed".

6 On Page 223, by striking out subsection 14.14 (g) (8)
7 and inserting in lieu thereof a new subsection 14.14 (g)
8 (8), to read as follows: "(8) Surface water runoff from
9 areas above and adjacent to the fill shall be diverted into
10 properly designed and constructed stabilized diversion
11 channels which have been designed using best current
12 technology to safely pass the peak runoff from a 100 year,
13 24-hour precipitation event. The channel shall be designed
14 and constructed to ensure stability of the fill, control
15 erosion, and minimize water infiltration into the fill."

16 On Page 232, by inserting a new subsection, designated
17 subsection 14.19 (d) to read as follows: "(d) Timber from
18 clearing and grubbing operations may be wind-rowed below
19 the projected toe of the outslope in a manner that will
20 provide shelter and habitat for game and non-game wildlife
21 and provide for enhanced sediment control. These materials
22 may not be placed in natural water courses or where they
23 will be covered by spoil material at the toe of the
24 outslope. The wind-rows must be of relatively uniform

1 height and width and must be more or less evenly
2 distributed along the lower reaches and within the permit
3 area."

4 On Page 240, subsection 17.1, in the first sentence,
5 after the words "mining and reclamation," by striking out
6 the remainder of the paragraph and substituting therefor
7 the following: "required by the Act and these Rules,
8 including the engineering analyses and designs; the
9 development of cross-section maps and plans; the geologic
10 drilling and statement of results of test borings and core
11 samplings; preblast surveys; the collection of
12 site-specific resource information and production of
13 protection and enhancement plans for fish and wildlife
14 habitats and other environmental values; and the collection
15 of archaeological and historical information; and any other
16 archaeological and historical information required by the
17 federal department of the interior and the preparation of
18 plans that may be necessitated thereby; and the director
19 shall provide or assume the cost of training coal operators
20 that meet the qualifications concerning the preparation of
21 permit applications and compliance with the regulatory
22 program, and shall ensure that qualified coal operators are
23 aware of the assistance available under this section.

24 On Page 240, subsection 17.1, after the first

1 paragraph by inserting a new paragraph, to read as follows:
2 "The Director will develop a procedure for the interstate
3 coordination and exchange of information collected under
4 the Small Operators Assistance Program."

5 On Page 241, by striking out subsection 17.4 in its
6 entirety and substituting therefor the following: "17.4
7 Request for Assistance. Each applicant requesting
8 assistance shall provide information on forms provided by
9 the director in an application that shall be clear and
10 concise and shall be provided in a format prescribed by the
11 Director and/or a format required by the Federal Office of
12 Surface Mining Reclamation and Enforcement."

13 On Page 249, subsection 17.7 (a) (4), after the words
14 "twelve (12) month period" by striking the remainder of the
15 sentence and inserting in lieu thereof the words
16 "immediately following permit issuance."

17 On page 273, subsection 20.6 (a), after the word
18 "first" by striking out the words "thirty (30)" and
19 inserting in lieu thereof the word "fifteen".

20 On page 273, subsection 20.6 (c), after the words
21 "date of the" by striking out the words "Assessment Officer
22 receiving the
23 finding specified in paragraph (a) of this subsection." and
24 inserting in lieu thereof the words "issuance of a notice

1 or order";

2 On page 274, subsection 20.6 (d), by striking out the
3 first sentence, and inserting in lieu thereof the
4 following: "The time and place of an informal assessment
5 conference shall be posted at the Department of
6 Environmental Protection Office nearest to the operation.

7

8 NOTE: The purpose of this bill is to authorize the
9 Division of Environmental Protection to promulgate
10 legislative rules relating to hazardous waste management.

11

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

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KEN HECHLER
Secretary of State

WILLIAM H. HARRINGTON
Chief of Staff

MARY P. RATLIFF
Deputy Secretary of State
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT
COMPLIANCE MONITORING & ENFORCEMENT

JUDY COOPER
Director, Administrative Law

STEPHEN N. REED
Deputy Secretary of State

PENNEY BARKER
Supervisor, Corporations

CATHERINE FREROTTE
Executive Assistant

STATE OF WEST VIRGINIA
SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900

TO: H. MICHAEL DORSEY

AGENCY: DEP -- WASTE MGMT\WATER RESOURCES

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 10, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 35 TITLE: 47 DEP - WASTE MGMT\WATER RESOURCES

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: *H. Michael Dorsey* H. Michael Dorsey

TITLE OF PERSON SIGNING: Assistant Chief

DATE: June 19, 1996

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.