

JANUARY 8.

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Monday, January 8, 1996, 5:00 p.m. to 9:00 p.m.

Senate Finance Committee Room - M-451

1. Approval of Minutes - Meeting December 12, 1995
2. Review of Legislative Rules:
 - a. Department of Tax and Revenue
Bingo
 - b. Environmental Quality Board
Requirements Governing Water Quality Standards
 - c. Environmental Protection
Solid Waste Management Regulations
 - d. DEP/Water Resources/Solid Waste Management
Hazardous Waste Management Regulations
 - e. DEP/Water Resources/Solid Waste Management
Underground Storage Tanks
 - f. Environmental Protection
Monitoring Well Design Standards
 - g. Division of Health
Personal Care Homes
4. Other Business:

Monday, January 8, 1996

5:00 P.M. - 9:00 P.M. Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin,
ex officio nonvoting member

Robert "Chuck" Chambers,
ex officio nonvoting member

Senate

Ross, Chairman (absent)
Grubb, Vice Chairman
Anderson (absent)
Boley (absent)
Buckalew
Macnaughtan (absent)

House

Douglas, Chairman
Linch, Vice Chairman
Compton (absent)
Faircloth (absent)
Gallagher
Riggs (absent)

The meeting was called to order by Delegate Douglas, Co-Chairman.

The committee waited until 5:20 P.M. However, due to inclement weather conditions, a quorum was not present.

Co-Chairman Douglas announced that the meeting would be rescheduled for Tuesday, January 9, 1996 at 5:00 P.M. If a quorum is not present on Tuesday, the meeting will be rescheduled for 9:00 A.M. Wednesday, January 10, 1996.

Upon a motion by Senator Buckalew the meeting was adjourned.

JANUARY 9.

questions from Committee members. Libby Chatfield, technical advisor to the Board, and Craig Skaggs, Regional Director for Dupont, addressed the Committee and responded to questions. David Youssef, West Virginia Manufacturers Association, responded to questions from the Committee.

Mr. Ross told the Committee that Mr. Buckalew's motion to amend Sections 5, 6 and 7 of the proposed rule were still pending. Ms. Douglas asked that the motion be divided into Section 5, relating to biocumulatives, and Sections 6 and 7, relating to the five-mile rule.

Mr. Buckalew moved that Section 5 of the proposed rule be amended allowing biocumulative mixing zones. A roll call vote was demanded. The motion was adopted 6-5.

Mr. Buckalew moved that Sections 6 and 7 of the proposed rule be amended to establish a five-mile limit to Class A streams. A roll call vote was demanded. The motion was rejected 5 to 6.

Ms. Douglas moved that the proposed rule be approved as modified and amended. The motion was adopted.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the Division of Health, Personal Care Homes, and stated that the Division has agreed to technical modifications. Nancy Tyler, Director of OFLAC, and Mark Grove, President of the West Virginia Personal Care Homes Association, addressed the Committee and responded to questions.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted. Ms. Boley and Mr. Riggs voted "No."

Mr. Altizer explained the rule proposed by the Division of Environmental Protection, Monitoring Well Design Standards. He explained that the Division has filed proposed modifications to the proposed rule responding to the public comments. The Division was unable to completely respond to the comments and also meet the Committee's deadline for filing. Mike McThomas, representing the West Virginia Manufacturers Association, and K. O. Damron, representing West Virginia Surface Mine and Reclamation Association, responded to questions from the Committee.

Ms. Douglas moved that the Committee adopt the Division's proposed modifications. The motion was adopted.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Anderson moved that the Committee recess until 10:00 a.m. Wednesday. The motion was adopted.

The meeting was called back to order on Wednesday, January 10, 1996, at 10:00 a.m. by Senator Ross, Co-Chairman.

Mr. Altizer reviewed his abstract on the rule proposed by the Division of Environmental Protection, Solid Waste Management Regulations, and stated that the Division has agreed to technical modifications. Dick Cooke, representing Solid Waste Management, responded to questions.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer explained the rule proposed by the Division of Environmental Protection, Hazardous Waste Management Regulations, and stated that the Division has agreed to technical modification.

Ms. Boley moved that the proposed rule be amended to return Table I fees to current levels. The motion was rejected.

Mr. Macnaughtan moved to amend the proposed rule to cut proposed increases to half the proposed amount. The motion was adopted.

Mike Dorsey stated that the Department of Environmental Protection would agree to the amendments by Senators Boley and Macnaughtan to cut the proposed fee increases in Table I of the rule to one-half the proposed amount.

Mr. Gallagher moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer explained the rule proposed by the Division of Environmental Protection, Underground Storage Tanks, and stated that the Division has agreed to technical modifications.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Douglas moved that the Committee's staff be directed to draft individual bills of authorization for each proposed rule considered by the Committee, cause the bills to be introduced and place each Delegates name on every House bill introduced and each Senators name on every Senate bill introduced. The motion was adopted.

Ms. Douglas moved that the Committee authorize staff to draft a technical rules bill to make technical corrections to the Code of State Rules, cause the bill to be introduced and place each Delegates name on the House bill and each Senators name on the Senate bill. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1/9/96

TIME: 5:00 pm.

NAME Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

			✓	
				✓
				✓
				✓
			✓	
			✓	
			✓	
			✓	
				✓
			6	5

RE: EQ B - Water Quality Stds
§5 WVMFgs amendments

*(Nursing
Care)*

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE JAN. 9, 1995 5:00-9:00 p.m.

PLEASE PRINT NAME	PRINT FULL ADDRESS	TITLE—REPRESENTING	CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Mike Doesey	1356 Hansford St Charleston WV 25311	WV DEP Office of Waste Mgmt (AW)	* If requested
Ken Ellison	1356 Hansford St Charleston WV	WV DEP Office of Waste Mgmt (SW)	> If requested
Ken Howard	Charleston	DEPT OFF. of Reg. Devel	" "
Dick Cooke	1356 Hansford St	DEP/office Waste	If requested
LARRY S. ATHA	1356 Hansford St Charleston WV 25308	WV DEP CWM/SWMS	If Requested
DAVID P. WATKINS	1201 Greenbrier St Charleston, WV 25301	WV DEP OWR/GROUND WATER	If requested
MARK S. PRIDDY	" "	" "	" "
R Wayne Wilson	" "	" "	" "
JOHN MONTGOMERY	Charleston	TAX & REVENUE	AS NEEDED
Craig Skaggs	27 High Meadow WV	DuPont	As needed
Mark Grove	46 Choleen Greenbrier	WV PCH ASSOC. Pres.	✓
Dorothy Taylor	Charleston	O HFLAC Director	✓
Shylli Myers	1113 ^{WAVENWOOD WV} WASHINGTON ST.	Adm. Rav. Care CENTER	✓
George A. Polen	82 Bethel Place Washington, WV 26181	WV PCH ASSOCIATION	If Requested
Roy HERZBACH	922 Quaker St 4th Fl. Charleston 25301	Ombudsman	If requested

Jesse Sample s #8 Capitol St. Suite 700 WV Health Care Assn. IF Requested
Charleston WV 25301

Ned Rose Box 549 CRW 25722 WERTON STEEL As Needed (H2O rule)
—DICK—

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1-9-96

TIME: 5:00 pm - 9:00 p.m.

NAME Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

✓				
✓				
✓				
✓				
✓				
✓				
✓				
✓				
✓				

RE:

Proposed Changes to Water Quality Standards

Amendments to
Water Quality
46 CSR1

A. Changes to Section 5

5.1. In the permit review and planning process or upon the request of a permit applicant or permittee, the chief may establish on a case-by-case basis an appropriate mixing zone.

5.2 The following guidelines and conditions are applicable to all mixing zones:

a. The chief will assign, on a case-by-case basis, definable geometric limits for mixing zones for a discharge or a pollutant or pollutants within a discharge. Applicable limits shall include, but may not be limited to, the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones. Mixing zones shall take into account the mixing conditions in the receiving stream (i.e. whether complete or incomplete mixing conditions exist). Mixing zones will not be allowed until applicable limits are assigned by the chief in accordance with this section.

b. Concentrations of pollutants which exceed the acute criteria for protection of aquatic life set forth in Appendix E shall not exist at any point within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned. A zone of initial dilution may be assigned on a case-by-case basis at the discretion of the chief. The zone of initial dilution is the area within the mixing zone where initial dilution of the effluent with the receiving water occurs, and where the concentration of the effluent will be its greatest in the water column. Where a zone of initial dilution is assigned by the Chief, the size of the zone shall be determined using one of the four alternatives outlined in Section 4.3.3 of EPA's Technical Support Document for Water Quality-Based Toxics Control (EPA/505/2-90-001 PB91-127415, March 1991). Concentrations of pollutants shall not exceed the acute criteria at the edge of the assigned zone of initial dilution. Chronic criteria for

the protection of aquatic life may be exceeded within the mixing zone but shall be met at the edge of the assigned mixing zone.

c. Concentration of pollutants which exceed the criteria for the protection of human health set forth in Appendix E shall not be allowed at any point unless a mixing zone has been assigned by the Chief after consultation with the Commissioner of the West Virginia Bureau of Public health. Human health criteria may be exceeded within an assigned mixing zone, but shall be met at the edge of the assigned mixing zone. Mixing zones for human health criteria shall be sized to prevent significant human health risks and shall be developed using reasonable assumptions about exposure pathways. In assessing the potential human health risks of establishing a mixing zone upstream from a drinking water intake, the Chief shall consider the cumulative effects of multiple discharges and mixing zones on the drinking water intake. No mixing zones for human health criteria shall be assigned for bioaccumulative pollutants. For the purposes of this section, bioaccumulative pollutants are those listed in 40 C.F.R. 132, EPA's Final Water Quality Guidance for the Great Lakes System, Table 6.A, titled "Pollutants that are bioaccumulative chemicals of concern." No mixing zone for human health criteria shall be established on a stream which has a seven (7) day, ten (10) year return frequency of 5 cfs or less.

The WVMA urges deletion of the redlined language in §5.2.c, above.

m. The Chief may establish for any discharge located one half mile or less upstream of a Category A public water supply intake, effluent limitations for the protection of human health that require additional removal of those pollutants than otherwise would be provided by this section.

The WVMA urges adoption of §5.2.m, above.

CM #1
Oshropko

Amber Reese

B. Changes to Section 6

6.2. Category A -- Water Supply, Public. -- This category is used to describe waters which, after conventional treatment, are used for human consumption. This category includes streams on which the following are located:

- a. All community domestic Water supply systems;
- b. All non-community domestic Water supply systems, (i.e., hospitals, schools, etc.);
- c. All private domestic Water systems; and
- d. All other surface Water intakes where the Water is used for human consumption, and

This use, and the associated criteria, shall apply to only the stream segment extending upstream from the intake for a distance of five miles. (See Appendix B for partial listing of intakes)

The WVMA urges addition of this language to §6.2., above

~~e. Shall apply to the stream segment extending upstream from the intake for a distance as defined in subsection 7.2.a.B of this series. [(See Appendix B for partial listing of category A waters, see section 7.2.a.B for additional requirements for category A waters.)]~~

The WVMA urges deletion of the redlined material.

C. Changes to Section 7

7.2 Applicability of Water Quality Standards. The following shall apply at all times unless a specific exception is granted in this section:

- a. Water Use Categories as described in Section 6.

A. Based on meeting those Section 6 definitions, tributaries or stream segments may be classified for one or more Water Use Categories. When more than one use exists, they shall be protected by criteria for the use category requiring the most stringent protection.

~~[B. Each segment extending upstream from the intake of a Water supply public (Water Use Category A), for a distance of five (5) miles one-half (1/2) mile or to the headwater, must be protected by prohibiting the discharge of any pollutants in excess of the concentrations designated for this Water Use Category in Section 8. Provided, however, that in addition, with a that one-half (1/2) mile zone extending one-half (1/2) mile above the intake, the Chief Office of Water Resources Section, Division of Natural Resources Environmental Protection, may establish for any discharge, effluent limitations for the protection of human health that require additional removal of those pollutants than would otherwise be provided by this rule. (If a watershed is not significantly larger than either of the two (2) this zones above the intake, the water supply section may include the entire upstream watershed to its headwaters.]~~

The WVMA urges deletion of this subsection.

To Delegate Callaghan

Move to:

1. Modify the rule to permit other health care professionals (midwives, e.g.) be able to order HIV testing and to permit notification of a health care worker in cases of accidental exposure to the HIV virus in a non-emergency care situation. Key items are 4.1.1 and 4.3.5. A few other items will need to be changed for consistency of usage.

2. Move 4.3.5 to the end of § 4.2. [4.3 relates to criminals & victims. 4.2 is testing without consent in other situations.]

4.1.1. A physician, ~~dentist~~ other health care professional acting within the scope of his or her professional license, or the Administrator director may request that a person consider voluntarily consenting to an HIV-related test when there is medical evidence providing reasonable cause to believe that: ... [dentist is listed in the definition of "health care professional.]

~~4.3.5~~ If the Administrator director has evidence to support the belief that a person could be infected with HIV and that the blood or other bodily fluids of that person may have exposed another person receiving or rendering emergency medical aid, or in the performance of ~~their~~ his or her work, or in other medically recognized exposure situations or settings to a significant risk for transmission of HIV, the Administrator director may, upon request by a physician, other health care provider acting within the scope of his or her professional license, or at his or her discretion, request ~~said~~ that person to consent to HIV-related testing: Provided, That if the person believed by the Administrator director to be infected refuses to consent, or if substituted consent is refused in the case of a person unable to grant or withhold consent, the Administrator director may require an HIV test if information from ~~such a~~ the test is believed by the Administrator director to be necessary to protect the life or health of the person who may have been exposed to HIV. The director may, at his or her discretion, release the test result to the physician or other health care provider: Provided, That the provisions of §§ 8.1 through 8.4 of this rule and W. Va. Code § 16-3C-3 regarding confidentiality and disclosure apply. The Administrator director shall may establish a list of health care providers who are approved to authorize HIV testing in emergency medical aid circumstances. [To be moved to 4.2.2.]

Note: The changes to 4.3.5 also take care of Senator Boley's concern about the child who was stuck with a needle by a homeless individual who was possibly HIV-positive. If we don't have the language exactly right, we'll work on it some more.

Jay Howard

01/09/96 17:00 304 558 4116
 01/09/96 18:01 AQB\EQB - CHARLESTON, WV → 304 357 7829
 304 558 1130
 01/09/96 16:55 DHHR - OFFICE OF THE SECRETARY → 304 558 4116

NO. 315 P002/003
 NO. 895 P001/002

Dist. meet. 1-9-96



STATE OF WEST VIRGINIA
 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Garlon Ceperton
 Governor

Gretchen O. Lewis
 Secretary

January 9, 1996

Senator Michael Ross, Co-Chair
 Legislative Rule Making Review Committee
 Capitol Complex Building 1, Room 152
 Charleston, West Virginia 25305

Re: 46 CSR 1 - Requirements Governing
 Water Quality Standards

Dear Senator Ross:

I have recently been made aware of proposed amendments sent to you by the West Virginia Manufacturers' Association. The proposed amendments relate to the Environmental Quality Board's *Water Quality Standards Rule* which is scheduled to be considered by your committee on January 8. More specifically, the proposed amendments deal with West Virginia Code of State Regulations 46 CSR and water quality affecting public drinking water systems.

I also have read the Board's December 26, 1995 letter sent to you which urges that the amendments not be adopted. I wish to convey to you and the other Committee members the Bureau's concurrence with the Board's comments and support of the present language of the rule now before you without the amendments in question.

Post-It™ Fax Note	7871	Date 1/9/96	# of pages 2
To Libby CHATFIELD		From DON KUNTZ	
Co-Dept DEP		Co. ENV. HEALTH	
Phone #		Phone #	
Fax # 8-4116		Fax #	

BUREAU FOR PUBLIC HEALTH
 Office of Environmental Health Services
 815 Quarrier Street, Suite 418
 Charleston, West Virginia 25307-2616
 Telephone (304) 558-2981 FAX (304) 558-0643

Senator Ross
January 9, 1996
Page 2

Your consideration of our comments relating to the rule and its public health implications is most appreciated.

Sincerely,



William T. Wallace, Jr., MD, MPH
Commissioner

WTW:DAK:mf

cc: Gretchen O Lewis, Secretary
Department of Health and Human Resources

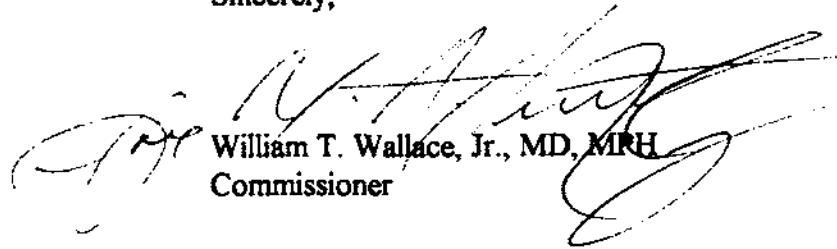
Joseph P. Schwab, PE, MPH, Director
Office of Environmental Health Services

Donald A. Kuntz, PE, MSM, Director
Environmental Engineering Division
Office of Environmental Health Services

Senator Ross
January 9, 1996
Page 2

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Sincerely,



William T. Wallace, Jr., MD, MPH
Commissioner

WTW:DAK:nst

cc: Gretchen O. Lewis, Secretary
Department of Health and Human Resources

Joseph P. Schock, PE, MPH, Director
Office of Environmental Health Services

Donald A. Kuntz, PE, MSM, Director
Environmental Engineering Division
Office of Environmental Health Services

Proposed Changes to Water Quality Standards

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b. Concentrations of pollutants which exceed the acute criteria for protection of aquatic life set forth in Appendix E shall not exist at any point within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned. A zone of initial dilution may be assigned on a case-by-case basis at the discretion of the chief. The zone of initial dilution is the area within the mixing zone where initial dilution of the effluent with the receiving water occurs, and where the concentration of the effluent will be its greatest in the water column. Where a zone of initial dilution is assigned by the Chief, the size of the zone shall be determined using one of the four alternatives outlined in Section 4.3.3 of EPA's Technical Support Document for Water Quality-Based Toxics Control (EPA/505/2-90-001 PB91-127415, March 1991). Concentrations of pollutants shall not exceed the acute criteria at the edge of the assigned zone of initial dilution. Chronic criteria for

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c. Concentration of pollutants which exceed the criteria for the protection of human health set forth in Appendix E shall not be allowed at any point unless a mixing zone has been assigned by the Chief after consultation with the Commissioner of the West Virginia Bureau of Public health. Human health criteria may be exceeded within an assigned mixing zone, but shall be met at the edge of the assigned mixing zone. Mixing zones for human health criteria shall be sized to prevent significant human health risks and shall be developed using reasonable assumptions about exposure pathways. In assessing the potential human health risks of establishing a mixing zone upstream from a drinking water intake, the Chief shall consider the cumulative effects of multiple discharges and mixing zones on the drinking water intake. No mixing zones for human health criteria shall be assigned for bioaccumulative pollutants. For the purposes of this section, bioaccumulative pollutants are those listed in 40 C.F.R. 132, EPA's Final Water Quality Guidance for the Great Lakes System, Table 6.A, titled "Pollutants that are bioaccumulative chemicals of concern." No mixing zone for human health criteria shall be established on a stream which has a seven (7) day, ten (10) year return frequency of 5 cfs or less.

The WVMA urges deletion of the redlined language in §5.2.c, above.

m. The Chief may establish for any discharge located one half mile or less upstream of a Category A public water supply intake, effluent limitations for the protection of human health that require additional removal of those pollutants than otherwise would be provided by this section.

The WVMA urges adoption of §5.2.m, above.

B. Changes to Section 6

6.2. Category A -- Water Supply, Public. -- This category is used to describe waters which, after conventional treatment, are used for human consumption. This category includes streams on which the following are located:

- a. All community domestic Water supply systems;
- b. All non-community domestic Water supply systems, (i.e., hospitals, schools, etc.);
- c. All private domestic Water systems; and
- d. All other surface Water intakes where the Water is used for human consumption ; and

This use, and the associated criteria, shall apply to only the stream segment extending upstream from the intake for a distance of five miles. (See Appendix B for partial listing of intakes)

The WVMA urges addition of this language to §6.2., above

~~e. Shall apply to the stream segment extending upstream from the intake for a distance as defined in subsection 7.2.a.B of this series. [(See Appendix B for partial listing of category A waters, see section 7.2.a.B. for additional requirements for category A waters.)]~~

The WVMA urges deletion of the redlined material.

C. Changes to Section 7

7.2 Applicability of Water Quality Standards. The following shall apply at all times unless a specific exception is granted in this section:

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A. Based on meeting those Section 6 definitions, tributaries or stream segments may be classified for one or more Water Use Categories. When more than one use exists, they shall be protected by criteria for the use category requiring the most stringent protection.

[B. Each segment extending upstream from the intake of a Water supply public (Water Use Category A), for a distance of five(5) miles one-half ($\frac{1}{2}$) mile or to the headwater, must be protected by prohibiting the discharge of any pollutants in excess of the concentrations designated for this Water Use Category in Section 8. Provided, however, that in addition, with a that one half ($\frac{1}{2}$) mile zone extending one half ($\frac{1}{2}$) mile above the intake, the Chief Office of Water Resources Section, Division of Natural Resources Environmental Protection, may establish for any discharge, effluent limitations for the protection of human health that require additional removal of those pollutants than would otherwise be provided by this rule. (If a watershed is not significantly larger than either of the two (2) this zones above the intake, the water supply section may include the entire upstream watershed to its headwaters.)

The WVMA urges deletion of this subsection.

Tax-Bingo. Dist at meeting
1-9-96

§ 110-16-15. Use of Facilities for Bingo.

15.1 The property owner(s) may not allow his or her facilities to be used for the playing of bingo for more than six (6) consecutive hours during any calendar day or for the playing of super-bingo for more than six (6) consecutive hours during any calendar day. The rent paid for using the facilities for the playing of bingo and super-bingo may not exceed fair market value rent of the facilities.

15.2 The property owner(s) may not allow his or her facilities to be used by more than four (4) super-bingo licensees for the playing of super-bingo during any period of four (4) consecutive calendar weeks. Additionally, super-bingo may be played during two (2) consecutive days during a conventional weekend (Saturday and Sunday); Provided, That such super-bingo occasions may occur at the same facility no more often than on alternating weekends during a calendar month.

Amendment adopted by The Legislative Rule-Making Review Committee on Tuesday, January 9, 1996, to 46CSR1- Requirements Governing Water Standards.

On page one of the proposed rule by deleting the new 2.1 definition of "bioaccumulation" and by reinserting the stricken language of subsection 2.2 definition of "cumulative" and renumbering the subsequent subsections;

and, on page 8, amending Subsection 5.2.c. to read as follows:

c. Concentrations of pollutants which exceed the criteria for the protection of human health set forth in Appendix E shall not be allowed at any point unless a mixing zone has been assigned by the Chief after consultation with the Commissioner of the West Virginia Bureau of Public Health. Human health criteria may be exceeded within an assigned mixing zone, but shall be met at the edge of the assigned mixing zone. Mixing zones for human health criteria shall be sized to prevent significant human health risks and shall be developed using reasonable assumptions about exposure pathways. In assessing the potential human health risks of establishing a mixing zone upstream from a drinking water intake, the Chief shall consider the cumulative effects of multiple discharges and mixing zones on the drinking water intake. No mixing zone for human health criteria shall be established on a stream which has a seven (7) day, ten (10) year return frequency of 5 cfs or less.

Mr. Ross moved that the proposed rule be approved as ^{filed}~~modified~~. The motion was adopted.

Mr. Altizer, reviewed his abstract on the rule proposed by the Governor's Committee on Crime, Delinquency and Correction Basic Training Academy, Annual In-Service and Biennial In-Service Training Standards, and stated that the Governor's Committee has agreed to technical modifications. Don Davidson, Governor's Committee on Crime, Delinquency and Correction, answered questions from the Committee.

Mr. Buckalew moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Mr. Altizer explained the rule proposed by the Public Service Commission, Rules and Regulations for the Government of Telephone Utilities, and stated that the Commission has agreed to technical modifications.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the Insurance Commissioner, Individual Medical Savings Accounts, and stated that the Commissioner has agreed to technical modifications. Tim Hynick, Office of the Insurance Commissioner, responded to questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed, for the Committee, the rules remaining to be considered by the Committee

The meeting was adjourned.

7ms Modification offered by Del. KISS and agreed to by Ken Politen
including background water quality etc.

DEP PROPOSING THIS
NEW DEFINITION TODAY

2.6. "Best Professional Judgement" or "BPJ" means the Director's highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the Director under the Clean Water Act (CWA) Sections 301 and 402.

2.62.7. "Clean Water Act" or "CWA" means Public Law 92-500, as amended by Public Law 95-217 Public Law 95-576; 33 U.S.C. §1251 et seq. (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972).

2.72.8. "Continuous Discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

2.82.9. "Coal Mines, Preparation Plants and All Refuse and Waste Therefrom" means any point source covered under 40 C.F.R. Part 434 and any coal mine, coal preparation plant, coal preparation plant associated areas, refuse pile, coal waste pile, or other related activity including any related sewage treatment facilities and bath houses required to have a permit under CWA or Article 5A11, but excluding dredging operations or the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen (16) and two-thirds percent (2/3%) of the tonnage of minerals removed for purposes of commercial use or sale.

2.92.10. "Coal Mine" or "Mine" means the area, and any related structures, on and beneath land, used or disturbed in activity related to the extraction, removal or recovery of coal.

2.102.11. "Coal Preparation Plant" means a facility where coal is subjected to cleaning, concentrating, or other processing or preparation in order to separate coal from its impurities and is loaded for transit to a consuming facility.

2.112.12. "Coal Preparation Plant Associated Areas" means the coal preparation plant yards, immediate access roads, coal refuse piles, tipples, loadouts, and coal storage piles and facilities.

2.122.13. "Coal Remining Operation" means a coal mining operation which begins after February 4, 1987 at a site on which coal mining was conducted before the effective date of the federal Surface Mining Control and Reclamation Act of 1977.

2.132.14. "Daily Discharge" means the discharge of a pollutant measured during a calendar day or within any specified period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

2.142.15. "Discharge" when used without qualification means the discharge of a pollutant.

2.152.16. "Discharge of a Pollutant" means:

Distributed 12/1/95

Dist meet 1-9-96



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

Gretchen O. Lewis
Secretary

January 9, 1996

Senator Michael Ross, Co-Chair
Legislative Rule Making Review Committee
Capitol Complex Building 1, Room 152
Charleston, West Virginia 25305

Re: **46 CSR 1 - Requirements Governing
Water Quality Standards**

Dear Senator Ross:

I have recently been made aware of proposed amendments sent to you by the West Virginia Manufacturers' Association. The proposed amendments relate to the Environmental Quality Board's *Water Quality Standards Rule* which is scheduled to be considered by your committee on January 8. More specifically, the proposed amendments deal with **West Virginia Code of State Regulations 46 CSR** and water quality affecting public drinking water systems.

I also have read the Board's December 26, 1995 letter sent to you which urges that the amendments not be adopted. I wish to convey to you and the other Committee members the Bureau's concurrence with the Board's comments and support of the present language of the rule now before you without the amendments in question.

BUREAU FOR PUBLIC HEALTH
Office of Environmental Health Services
815 Quarrier Street, Suite 418
Charleston, West Virginia 25301-2616
Telephone (304) 558-2981 FAX (304) 558-0691

JANUARY 10

Recess to 1/10/96

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Wednesday 10
Monday, January 8, 1996, ~~5:00 p.m.~~ *10:00 a.m.* to 9:00 p.m.
House Judiciary
Senate Finance Committee Room - M-451

1. Approval of Minutes - Meeting December 12, 1995
2. Review of Legislative Rules:
 - a. ~~Department of Tax and Revenue~~
Bingo
 - b. ~~Environmental Quality Board~~
Requirements Governing Water Quality Standards
 - c. Environmental Protection
Solid Waste Management Regulations
 - d. DEP/Water Resources/Solid Waste Management
Hazardous Waste Management Regulations
 - e. DEP/Water Resources/Solid Waste Management
Underground Storage Tanks
 - f. Environmental Protection
Monitoring Well Design Standards
 - g. ~~Division of Health~~
Personal Care Homes
4. Other Business:

Recess

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: JAN. 10, 1994

TIME: 10:00 A.M.

NAME

Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

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RE:

MEMORANDUM

TO: MEMBERS OF THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: JOE ALTIZER, COMMITTEE COUNSEL

RE: SOLID WASTE MANAGEMENT RULE- CHANGES TO RULE NOT REFLECTED IN FEDERAL REGULATIONS

DATE: JANUARY 9, 1996

40 CFR 258 provides criteria for solid waste disposal facilities. In the original proposed version of the rule, counterpart federal regulation cites are listed at the top of each rule section where there is a federal counterpart. The federal rules provide that states are required to adopt programs equivalent to federal requirements to gain federal approval of the state program. Once the state plan is approved, the state will have primacy in enforcing solid waste landfill requirements of this rule, without dual federal enforcement. The DEP is attempting to integrate federal requirements with the existing state program. There are additional provisions in the proposed rule not required by federal regulation. This brief memo outlines those additional requirements.

The additional state modifications to the rule are broken down into six sections.

1. Section 2 modifications are definitions that are used in the rule.
2. Section 3 relates to solid waste landfill permitting requirements.

Section 3.3.1 provides that existing permittees as well as new permittees can now be required by the Director to reapply for permit modifications per Section 3.5.4. These modifications include requirements for maps and soil information to be more specific.

Per Section 3.10, applications must now also include information on planned blasting at the facility.

Section 3.14 requires that the application must also provide information regarding background investigations of persons applying for permits. There must be annual updates of this information. Background investigations are required by WVC §22-

Section 3.16 reflects the code in prohibiting solid waste incineration at new facilities. The changes to this section also modify and add requirements for recycling facilities (see p.8 of DEP changes list).

Section 3.16.5 has also been modified to change classifications of Class D SWLF permits. Class D permits are issued on a individual basis. Class D-2 and D-3 have been deleted. The Office of Waste Management says that these general Class D permit changes follow The Office of Water Resources' approach at licensing, focusing on best management practices at each site rather than specific class requirements.

Section 3.17 is amended to provide draft general permit requirements for Class D permits.

Section 3.18 adds permit "reissuance" to the types of permit changes already covered under this section. This section's filing requirements currently apply only to modifications, suspensions and revocations of permits.

3. Section 4.3 general information.

Section 4.3.1 establishes qualifications and training requirements for landfill managers.

Section 4.4.1 sets out general information and record keeping requirements that SWLFs are required to keep at the facility. This section is expanded to include information relating to compliance of sediment control structures to this rule's current safety and operational requirements.

Section 4.5.2 (p.14) sediment control structure requirements are expanded and modified as well as other requirements for sediment and dust controls. Types of medical waste that are acceptable at SWLFs are modified.

4. Expanded groundwater monitoring reporting requirements.

Section 4.12 is modified, requiring that tonnage, surface water and leachate monitoring must be done and reports submitted to the DEP. These requirements are done to assure WV Water Pollution Control Act and other requirements are being met.

5. Miscellaneous changes

The modifications to Section 5.4 reflect the changes of Class D landfills into two classes; D and D-1. Section 5.6.1

makes small changes to requirements for green boxes, roll-offs and dumpsters.

6. Other

Two modifications to the rule vary from statutory requirements. Section 3.13.13 is amended to allow the agency to raise bond amounts for SWLF's to an unlimited amount to cover the costs of reclamation of the SWLF. The code presently limits the maximum amount to \$8,000.00 per acre. The agency has agreed to change this provision by incorporating the bond amount by reference and hopes to propose legislation to allow for greater bonding amounts to meet more stringent federal requirements. Section 3.5.4 allows the DEP to require that existing permitted facilities file a permit modification at the Directors discretion. This requirement is not expressly provided for in the code. According to DEP this is needed to gain federal approval of the program.

RCRA PERMIT APPLICATION REVIEW

The RCRA permit applications may be any combination of storage units (container, tank etc.), treatment units (tank, incinerator etc.) or disposal units (in surface impoundments, landfills etc.).

The review of the permit application from receipt to the issuance of the RCRA Permit falls into four stages excluding 'public hearing' and 'appeal'. One copy goes to the Permit Reviewer and another to the Inspector.

STAGE 1: Completeness Review

Man days required - 60

The completeness of the permit application includes:

1. The application is reviewed to check if it contains all the information required by the applicable regulations. The whole application is read and deficiencies are noted.
2. At least one site inspection is conducted by both the permit Reviewer and the Inspector to get first hand information about operational procedures at the facility.
3. A Notice of Deficiency (NOD) is written and typed, if required. The NOD is sent to the facility for submission of the additional information or other necessary corrections. The NOD also includes the input from the Inspector who reviews the application independently.
4. The response submission to the NOD is reviewed and if the application is still deficient a second (2nd) NOD is written (normally 2 NODs are enough, but in some cases 3 NODs are sent).
5. A letter is sent to the facility indicating that the application is complete.

STAGE 2: Technical Review

Man days required - 150

The technical review is started after the application is considered complete. The permit application consists of parts which are reviewed by different technical specialties (hereafter called specialists) such as engineers, geologists and chemists. The procedure normally is as follows.

1. The permit reviewer reviews the parts of the application for which he has the professional specialty or for parts, which do not need input from the specialists. The engineering designs are reviewed by the respective engineer(s), the geological part is reviewed by the geologist and the waste analysis plans and compatibility of different waste and containers are reviewed by the chemists. The Inspector from

compliance section of OWM also provides his input.

2. Another site inspection by the permit reviewer (may be accompanied by the respective specialist) is required to check the detailed designs to see if they conform with on site units.
3. The respective specialists give their comments to the permit reviewer who writes a Notice of Deficiency (NOD), if necessary, and sends it to the facility.
4. The response submission to the NOD is reviewed and if the application is still deficient second (2nd) NOD is written (normally 2 NODs are enough).
5. At least one meeting is necessary with the representatives of the facility if they do not agree with the review comments provided by this agency's specialists.

NOTE: The technical review of permit applications for land disposal units (such as landfills) require more resource input than non land disposal facilities (such as storage pads).

STAGE 3: Draft Permit and Public Notice Man days required - 30

1. The draft permit is prepared after the application is considered technically adequate, complete and meets respective regulatory requirements. The permit consists of the main body of the permit and at least five attachments.
2. The public notice is prepared by the public information office and sent to two newspapers and aired on two radio stations.
3. The draft permit is sent to the applicant, EPA and some state and federal agencies.

STAGE 4: Issuance of Final Permit Man days required - 20

1. Before the final permit is issued all comments received from the applicant, EPA, other agencies and the public are addressed and mailed.
2. The permit is corrected if there are minor corrections including additions based on public comment. If these additions and/or corrections do not need further public participation, the permit is finalized and issued.

TOTAL Man days (combined for all specialists)	----- 260 -----
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NOTES:

1. If a public hearing is conducted additional input of manpower is required. It varies with different situations. The public hearing for a permit for land disposal units or an incinerator will require more resources than permits for storage/treatment units.
2. Past experience shows that 30 percent of the permits are appealed to the Environmental Quality Board. Such appeals require additional resources of permitting and legal personnel.

The average salary of permitting personnel (including the group supervisor) is \$31,012. With the addition of benefits and indirect costs this number rises to \$55,176. This equals about \$85.00 per man day before benefits and indirect costs are added and \$151.00 per man day with the addition of those costs. If an average permit requires 260 man days, the pre and post overhead costs are \$22,100 and \$39,260 per permit. These costs would be lower for simple permits and higher for more complicated permits.

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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 47, Series 35, "Hazardous Waste Management Regulations"
 Type of Rule: XX Legislative Interpretive Procedural
 Agency Division of Environmental Protection, Water Resources and Solid Waste Management
 Address Division of Environmental Protection/Office of Waste Management
1356 Hansford Street
Charleston, WV 25301

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIR & ALTERNATIONS					
EQUIPMENT					
OTHER *(Section #4)					

2. Explanation of above estimates:

These regulations implement federally mandated changes to the State's Hazardous Waste Management Program. The permit fee increase will not affect the administrative cost of the program.

3. Objectives of these rules: The objective of this rule is to stay in compliance with federal guidelines when implementing the State program. The consistency achieved in these revisions assures the State of maintaining its current authorization status, make it eligible to receive additional authorization and, in turn, the continued receipt of federal funds that are vitally needed to implement the program.

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

4. Explanation of Overall Economic Impact of Proposed Rule.

A. A part of this rule proposes to increase the permit application fees to reflect more accurately the cost of permitting and regulating hazardous waste storage and/or disposal facilities. The permit application increase will increase the program's revenue by \$146,500 in State Fiscal Year 1997 and only \$19,500 in State Fiscal Year 1998. This revenue will be used as state match to the federal RCRA 3011 Hazardous Waste Management grant.

B. Economic Impact on Political Subdivision; Specific Industries; Specific group of Citizens.

The economic impact will be an increase in the amount of expenditures by those facilities that treat, store for more than 90 days, or dispose of hazardous waste on-site. The amount of increase will be contingent upon the number and kind of units that a facility operates. For example, if a facility has a storage permit, its fee will increase from \$1,000 to \$5,000 whereas if it has a small hazardous waste landfill permit, the fee will increase from \$2,500 to \$30,000.

C. Economic Impact on Citizens/Public at Large.

None.

Date: 1-4-1996

Signature of Agency Head or Authorized Representative

B. J. Smith

Dist meet 1/10/96



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

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, Ph.D.
DIRECTOR

January 4, 1996

Senator Mike Ross
Delegate Vicki V. Douglas
Legislative Rule Making Review Committee
Building 1, Room 152
1900 Kanawha Boulevard, East
Charleston, WV 25305-0470

Dear Senator Ross and Delegate Douglas:

This letter is to alert you to proposed amendments to the Hazardous Waste Management Rules (Title 47 Series 35) and to seek the support of your committee in implementing those amendments.

The first change involves the Small Quantity Generator (SQG) and Conditionally Exempt Small Quantity Generator (CESQG) Rules at Section 3 of the proposed rule. In the current format, the rules which are scattered throughout the federal regulations have been largely brought together in one location. Today we propose to simply adopt the SQG and CESQG by reference and place the language that is now Section 3 as our appendix to the rule to assist those generators who find the federal system confusing. The requirements for CESQGs to notify of their hazardous waste activity would remain at Section 3.2. A prohibition on the placement of hazardous waste in non hazardous waste landfills is also located at Section 3.2. This amendment makes no change in the stringency or effect of the rule as filed whatsoever.


The second change is the addition of what is known as the Universal Waste Rule at Section 13. This helpful rule was adopted by EPA too late to be included in the filed rule. What the rule does is make it easier to handle and recycle several common waste streams (batteries, mercury thermostats and pesticides). In addition to those three, the state has added mercury containing light bulbs. While this is less stringent than the federal rule, EPA is supportive of states that include these bulbs as part of the Universal Waste Rule.

Senator Mike Ross
Delegate Vicki V. Douglas
January 2, 1996
Page Two

Finally, we have added at Section 11.4 an extended payment option for those facilities that have permitting fees that equal or exceed fifty thousand dollars (\$50,000). In this scenario, qualified facilities may take up to three (3) years to pay the full amount of the fee. Of course, these amendments have necessitated changes in the numbering sequence.

We feel that these proposed amendments will be advantageous to all parties concerned and request that they receive your support

Sincerely,

A handwritten signature in black ink that reads "B.F. Smith". The letters are cursive and somewhat stylized.

B. F. Smith, P.E.
Chief

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

SERIES 35
HAZARDOUS WASTE MANAGEMENT RULE

§ 47-35-1. SCOPE AND AUTHORITY.

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

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

1.3. **Filing Date.**

1.4. **Effective Date.**

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

1.6. **Incorporation by Reference.** -- Whenever either federal statutes or regulations or state statutes or rules are incorporated by reference into this rule, the reference is to that statute or regulation in effect on July 1, ~~1994~~ 1995, unless otherwise noted in the text of this rule. This incorporation by reference is not intended to replace or abrogate federal authorities granted the Resource Conservation and Recovery Act of 1976.

~~1.6.1~~ **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:

~~1.6.1.a~~ **a.1.** "Office of waste management, West Virginia division of environmental protection" shall be substituted for "environmental protection agency."

1.6.1.b 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 yet adopted by reference or that are not delegable to the state, "administrator", "regional administrator", and "director" shall have the meaning defined in 40 CFR 260.10.

1.6.1.c 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.

1.6.1.d 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~~ **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.

~~2.2.1~~ **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.

~~2.1.1.a~~ **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.

~~2.1.1.b~~ **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.

~~2.1.1.c~~ **a.3.** "Small quantity generator" has the meaning set forth at paragraph 3.2.1.a.A 3.2.a.1. of this rule.

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.

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~~ 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~~ 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.

~~2.4.1~~ 2.4.a. Persons desiring to exclude ~~as~~ 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:

~~2.4.1.a~~ 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;

~~2.4.1.b~~ a.2. A copy of the administrator's approval granting the exclusion pursuant to 40 CFR § 260.20(d); and

~~2.4.1.c~~ a.3. Any other additional information which may be required for the chief to evaluate the petition.

~~2.4.2~~ 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.

~~2.4.3~~ 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:

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;

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

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:

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.

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.

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~~ **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.

~~3.1.1~~ **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)~~(A)~~, ~~(B)~~, or ~~(C)~~ to be exempt from the definition of hazardous waste, the owner or operator must comply with the following:

~~3.1.1.a~~ **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)~~, ~~(B)~~, or ~~(C)~~. A time schedule for the installation of such groundwater monitoring must be included. This requirement does not apply to wastewater treatment units or containers.

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

~~3.1.1.c~~ **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.

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

~~3.2.1 Special requirements for hazardous waste generated by small quantity generators. and Conditionally Exempt Small Quantity Generators:~~

~~3.2.1.a. Small Quantity Generators:~~

~~3.2.1.a.A A small quantity generator is a generator of hazardous waste that generates more than 100 kilograms but less than 1000 kilograms of hazardous waste per month.~~

~~3.2.1.a.B Hazardous waste determination. A person who generates wastes must determine if that waste is hazardous:~~

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

~~(b) Testing the waste according to methods set forth in 40 CFR part 261.~~

~~Voluntarily declaring the wastes as hazardous and subject to regulation:~~

~~(d)~~

~~3.2.1.a.C The small quantity generator must notify the chief of hazardous waste generation activities in accordance with the provisions of Section 4 of this rule. A small quantity generator may not treat, store or dispose of, transport or offer for transportation hazardous waste without having received an EPA identification number.~~

~~3.2.1.a.D The Small Quantity Generator may accumulate hazardous waste on site for 180 days unless the distance that waste must be shipped for proper treatment, storage or disposal is more~~

~~than 200 miles in which case the generator may accumulate hazardous waste on site for 270 days provided that the quantity of waste accumulated on site does not exceed 6,000 kilograms.~~

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

~~3.2.1.a.E Containers. The Small Quantity Generator must store hazardous waste in containers or tanks that must meet the following requirements.~~

~~(a) Containers must be in good condition as defined by Department of Transportation Regulations.~~

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

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

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

~~(e) Incompatible wastes (such as oxidizers and petroleum based degreasers) must not be placed in the same container. (Other examples of potentially incompatible wastes can be found at 40 CFR part 265, Appendix V).~~

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

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

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

~~3.2.1.a.G If a small quantity generator closes (permanently removes from service) a container or tank storage area 40 CFR § 265.114 must be followed to insure that no contamination exists or remains at the storage location.~~

~~3.2.1.a.H Labeling. Containers and tanks storing hazardous waste must comply with the following labeling requirements.~~

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

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

~~3.2.1.a.I 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 unless the waste is reclaimed under a contractual agreement where:~~

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

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

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

~~3.2.1.a.J Record keeping. The small quantity generator must comply with the following record keeping requirements:~~

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

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

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

~~(d) If a copy of the manifest with the handwritten signature of the owner or operator of the designated facility has not been received by the generator within 60 days of the date the waste was accepted by the initial transporter, the generator must~~

~~submit a legible copy of the manifest with some indication that the generator has not received confirmation of delivery to the chief.~~

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

~~3.2.1.a.K 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.~~

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

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

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

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

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

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

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

~~facility is operating, that employee must have immediate access to a device referenced by Section 3.2.1.a.K.(a) of these rules.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(j) The emergency coordinator or his designee must respond to any emergencies that arise and initiate the proper response to the emergency.~~

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

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

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

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

~~(iv) Extent of injuries, if any.~~

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

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

~~3.2.1.b Conditionally Exempt Small Quantity Generators.~~

~~3.2.1.b.A~~ A conditionally exempt small quantity generator is a generator of hazardous waste that produces no more than 100 kilograms of waste per month and that meets the requirements stipulated below.

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

~~3.2.1.b.B~~ The conditionally exempt small quantity generator must make a proper hazardous waste determination as specified in Section 3.2.1.a.B of these rules. When determining the amount of hazardous waste generated, a generator need only include those wastes that are generated on site prior to reclamation, are not excluded under 40 CFR part 261, and are not generated, reclaimed and reused on site.

~~3.2.1.b.C~~ The conditionally exempt small quantity generator must notify the chief of its hazardous waste generation activity. No generator shall treat, store or dispose of, transport or offer for transportation hazardous waste without having received an EPA identification number.

~~3.2.1.b.D~~ A conditionally exempt small quantity generator may accumulate up to 1000 kilograms of hazardous waste on site before becoming subject to the requirements of Sections 3.2.1.a.D and 3.2.1.a.H of these rules.

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

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

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

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

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

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

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

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

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

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

~~3.2.1.b.H If a conditionally exempt small quantity generator does not meet all of the requirements set forth herein, the exemption does not apply and the generator will be subject to full regulation.~~

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

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

~~4.1.1~~ **4.1.a.** Any person as described in Section 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.

~~4.1.2~~ 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 ~~Section 4.1.1~~ subdivision 4.1.a. of these rules or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in ~~Section 4.1.1~~ 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 Section subsection 4.1 of these rules shall provide a copy of that notification to the chief.

~~4.2.1~~ 4.2.a. Any person involved in hazardous waste activities that did not comply with the notification requirements of EPA, as referenced above in Section 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.

~~4.2.2~~ 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.

~~4.2.3~~ 4.2.c. One notification form is required for each generator.

~~4.2.4~~ 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.

~~4.2.5~~ 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.

~~4.2.6~~ 4.2.f. New generators and those initiating activities subsequent to the EPA notification period referenced in ~~Section 4.1.1~~ 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.

~~5.2.1~~ **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.

~~5.2.2~~ **5.2.b.** All references to 40 CFR § 262.10(e) shall be deemed references to Section subsection 5.2 and the subparagraphs 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 prove-named 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.

5.5. References to and Requirements of Small Quantity Generators. All references to and requirements of small quantity generators including but not limited to those at 40 CFR Parts 262.11, 262.20(e), 262.34(d), 262.34(e), 262.34(f), and 262.44 shall be deemed to be references to Section 3.2.1 subdivisions 3.2.a. and 3.2.b. and the subparagraphs herein, as appropriate. Section 3.2.1 Subdivisions 3.2.a. and 3.2.b. are not intended to limit the access of small quantity generators to any sections of the federal regulations which may have an impact upon their operations.

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

6.1. 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:

~~7.1.1~~ **7.1.a.** Owners or operators of hazardous waste incinerators; and

~~7.1.2~~ 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.

~~7.3.4.~~ 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.

~~7.34.1~~ 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.

~~7.34.2~~ 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.

~~7.4.2.a~~ b.1. For the purposes of 40 CFR part 264.94(a)(1), the groundwater protection standards at 46 CSR 7 shall apply.

~~7.34.3~~ 7.5.c. The provisions of 40 CFR § 264.99(g) are incorporated by reference with the following modifications:

~~7.34.3.a~~ 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.

~~7.45~~ 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:

~~7.45.1~~ 7.6.a. The provisions of 40 CFR §§ 264.149 and 264.150 are excepted from incorporation by reference.

~~7.56~~ 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.

~~7.56.1~~ 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".

~~7.67~~ 7.8. 40 CFR Part 264, Subparts AA, BB, CC. -- The provisions of 40 CFR part 264, subparts AA and, BB, and CC are excepted from incorporation by reference. Consult the regulations of the air quality board regarding emissions from incinerators.

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

8.1 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.

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

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

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

~~8.4-3~~ **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.

~~8.54~~ **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.

~~8.65~~ **8.6. 40 CFR Part 265 Subparts AA, BB, CC.** -- The provisions of 40 CFR part 265, subparts AA, and BB, and CC are excepted from incorporation by reference. Consult the rules of the air quality board regarding air emission standards for process vents and air emissions standards for equipment leaks.

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

9.1. 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. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF NEW HAZARDOUS WASTE LAND DISPOSAL FACILITIES.~~

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

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

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

~~110.1~~ **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 and 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.

~~12.1~~ **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.

~~12.2~~ **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.

~~10.1.3~~ **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 Sections subsections 10.2.211.4 through 10.2.911.14 of this rule. To the

extent of any inconsistency with 40 CFR part 270, the specific provisions contained herein shall control.

11.3.b. Definition of "Major Facility". -- The term "major facility" shall have the meaning given at Section 2.1.1.a paragraph 2.1.a.1. of this rule.

~~12.2.1~~ 11.4. Application Fees.

~~12.2.1.a~~ 11.4.1 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.

~~12.2.1.b~~ 11.4.2 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.

~~12.2.1.c~~ 11.4.3 11.4.c. The chief reserves his the right to promulgate rules establishing a permit renewal fee at a later date.

~~12.2.2~~ 11.5. Draft Permits.

~~12.2.2.a~~ 11.5.1 11.5.a. Once an application is complete, the chief shall tentatively decide whether to prepare a draft permit or to deny the application.

~~12.2.2.b~~ 11.5.2 11.5.b. If the chief decides to prepare a draft permit, a draft permit shall be prepared that contains the following information:

~~12.2.2.b.A~~ 11.5.2.a b.1. All conditions under 40 CFR §§ 270.30 and 270.32;

~~12.2.2.b.B~~ 11.5.2.b b.2. All compliance schedules under 40 CFR § 270.33;

~~12.2.2.b.C~~ ~~11.5.2.c~~ **b.3.** All monitoring requirements under 40 CFR § 270.31; and

~~12.2.2.b.D~~ ~~11.5.2.d~~ **b.4.** Standards for treatment, storage, and disposal and other permit conditions under 40 CFR part 270.

~~12.2.2.c~~ ~~11.5.3~~ **11.5.c.** A fact sheet prepared in accordance with ~~Section subsection~~ ~~12.2.3~~ 11.6 of these rules shall accompany the draft permit.

~~11.2.2.d~~ ~~11.5.4~~ **11.5.d.** Any additional information considered to be necessary or proper.

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

~~12.2.3.a~~ ~~11.6.1~~ **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.

~~12.2.3.b~~ ~~11.6.2~~ **11.6.b.** The fact sheet shall include, when applicable:

~~12.2.3.b.A~~ ~~11.6.2.a~~ **b.1.** A brief description of the type of facility or activity which is the subject of the draft permit;

~~12.2.3.b.B~~ ~~11.6.2.b~~ **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;

~~12.02.3.b.C~~ ~~11.6.2.c~~ **b.3.** A brief summary of the basis for the draft permit conditions including references to applicable statutory or rule provisions;

~~120.2.3.b.D~~ ~~11.6.2.d~~ **b.4.** Reasons why any requested variances or alternatives to required standards do or do not appear justified;

~~12.2.3.b.E~~ ~~11.6.2.e~~ **b.5.** A description of the procedures for reaching a final decision on the draft permit including:

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

(b) **b.5.B.** Procedures for requesting a hearing and the nature of that hearing; and

(c) **b.5.C.** Any other procedures by which the public may participate in the final decision; and

~~12.2.3.b.F~~ ~~11.6.2.f~~ **b.6.** Name and telephone number of a person to contact for additional information.

~~12.2.4~~ **11.7. Public Access to Information.**

~~12.2.4.a~~ ~~11.7.1~~ **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.

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

~~12.2.4.c~~ ~~11.7.3~~ **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.

~~12.2.4.d~~ ~~11.7.4~~ **11.7.d.** No information shall be protected as confidential information by the chief unless it is submitted in accordance with the provisions of ~~Section 12.2.4.c~~ ~~11.7.3~~ subdivision 11.7.c. of these rules and no information which is submitted in accordance with the provisions of ~~Section 12.2.4.c~~ ~~11.7.3~~ 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.

~~12.2.4.e~~ ~~11.7.5~~ **11.7.e.** All information which meets the tests of ~~Section 12.2.4.d~~ ~~11.7.4~~ 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 ~~Section 12.2.4.e~~ ~~11.7.4~~ 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.

~~12.2.4.f~~ ~~11.7.6~~ **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.

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

~~12.2.4.h~~ ~~11.7.8~~ **11.7.h.** Persons interested in obtaining information pursuant to ~~Section 12.2.4~~ 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).

~~12.2.4.i~~ ~~11.7.9~~ **11.7.i.** Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

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

~~12.2.5.a~~ ~~11.8.1~~ **11.8.a.** ~~Scope.~~ Public notice shall be given that the following actions have occurred:

~~12.2.5.a.A~~ ~~11.8.1.a~~ a.1. A draft permit has been prepared; or

~~12.2.5.a.B~~ ~~11.8.1.b~~ a.2. A hearing has been scheduled.

~~12.2.5.b~~ ~~11.8.2~~ 11.8.b. Timing.

~~12.2.5.b.A~~ ~~11.8.2.a~~ Public notice of the preparation of a draft permit required under Section ~~12.2.5~~ subsection 11.8. of these rules shall allow at least forty-five (45) days for public comment.

~~12.2.5.b.B~~ ~~11.8.2.b~~ 11.8.c. Public notice of a public hearing shall be given at least thirty (30) days before the hearing.

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

~~12.2.5.c.A~~ ~~11.8.4~~ 11.8.e. By mailing a copy of the notice to the following persons:

(a) e.1. The applicant;

(b) 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;

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

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

(e) 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

~~(f)~~ e.6. All persons to whom a public notice is sent;

~~(gf)~~ e.7. Persons on the mailing list developed
by:

~~(I)~~ e.7.A. Including those who request in writing to be on the list.

~~(ii)~~ e.7.B. Soliciting persons for "area lists" from participants in past permit proceedings in that area.

~~(iii)~~ 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.

~~(gh)~~ 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 ~~Section 12.2.5~~ subsection 11.8. of these rules, any newspaper which meets the provisions of W. Va. Code, § 59-3-1(b).

~~(hi)~~ 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.

~~(i)~~ e.10. Any person otherwise entitled to receive notice under ~~Section 12.2.5~~ subsection 11.8. of these rules may waive the right to receive notice for any classes and categories of permits.

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

~~12.2.5.d.A~~ ~~11.9.1~~ 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 ~~Section 12.2.5.a~~ 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.

~~12.2.5.d.B~~ ~~11.9.2~~ **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.

~~12.2.5.d.C~~ ~~11.9.3~~ **11.9.c.** Following completion of service of notice as set forth herein, and no later than the date of public notice required in ~~Section 12.2.5.a~~ 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.

~~12.2.5.d.D~~ ~~11.9.4~~ **11.9.d.** The personal notice required herein shall be a written notice containing at a minimum:

- (a) d.1. The name and address of the permit applicant;
- (b) d.2. The name, location, and type of hazardous waste management facility for which the application has been submitted;
- (c) d.3. A statement advising the recipients of the notice that a complete application for permit has been submitted; and
- (d) 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.

~~12.2.5.e~~ **11.10. Contents.**

~~12.2.5.e.A~~ ~~11.10.1~~ **11.10.a.** All public notices issued under ~~Section 12.2.5~~ subsection 11.8. of these rules shall contain the following information:

- (a) a.1. Name and address of the office processing the permit action for which notice is being given;
- (b) a.2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

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

(d) 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

(e) a.5. A brief description of the comment procedures required by ~~Sections 12.2.6~~ subsections 11.11. and ~~12.2.7~~ 11.12. of these rules and the time and place of any hearing that will be held, including a statement of procedures to request a hearing unless already scheduled, and other procedures by which the public may participate in the final permit decision.

~~12.2.5.e.B 11.10.2~~ 11.10.b. In addition to the general public notice described in ~~Section 12.2.5.e.A 11.10.1~~ subdivision 11.10.a. of these rules, the public notice of a hearing shall contain the following information:

(a) b.1. Reference to the date of previous public notices relating to the permit;

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

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

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

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

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

~~12.2.7.a 11.12.1~~ 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.

~~12.2.7.b~~ ~~11.12.2~~ **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 ~~Section 12.2.7~~ 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 ~~Section 12.2.5~~ subsection 11.8. of these rules.

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

~~12.2.8.a~~ ~~11.13.1~~ **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:

~~12.2.8.a.A~~ ~~11.13.1.a~~ **a.1.** Prepare a new draft permit, appropriately modified, under ~~Section 12.2~~ subsection 11.2. of these rules.

~~12.2.8.a.B~~ ~~11.13.1.b~~ **a.2.** Prepare a revised fact sheet under ~~Section 12.2~~ subsection 11.6. of these rules and reopen the comment period.

~~12.2.8.a.C~~ ~~11.13.1.c~~ **a.3.** Reopen or extend the comment period under ~~Section 12.2~~ subsection 11.11. of these rules to give interested persons an opportunity to comment on the information or arguments submitted.

~~12.8.b~~ ~~11.13.2~~ **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 ~~Section 12.2~~ subsection 11.8. of these rules shall define the scope of the reopening.

~~12.2.9~~ **11.14.** **Response to Comments.**

~~12.2.9.a~~ ~~11.14.1~~ **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:

~~12.2.9.a.A~~ 11.14.1.a a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit and the reasons for change; and

~~12.2.9.a.B~~ 11.14.1.b a.2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or hearing.

~~12.2.9.b~~ 11.14.2 11.14.b. The response to comments shall be delivered to any person who commented or any person who requests the same.

~~12.3~~ 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 ~~section 12.2.4~~ subsection 11.7. of these rules.

~~12.4~~ 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.

~~12.5~~ 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.

~~1213.1~~ 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:

~~1213.1.1~~ 12.1.a. The land has been used to manage hazardous wastes; and

~~1213.1.2~~ 12.1.b. Its use is restricted under 40 CFR § 264.117(c).

~~1213.2~~ 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.

~~1213.3~~ **12.3.** Other Requirements. Nothing contained in this section ~~13~~ of these rules shall relieve any person from complying with the requirements on deed and lease disclosures set forth in W. Va. Code, § 22-18-21.

§ 47-35-13. 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 <u>Drum Container</u>	<100 tons capacity \$1,000.00 <u>\$5,000.00</u>	≥ 100 tons capacity \$3,000.00 <u>\$7,500.00</u>
S02 Tank	<100 tons capacity \$1,000.00 <u>\$5,000.00</u>	≥ 100 tons capacity \$3,000.00 <u>\$7,500.00</u>
S04 Surface Impoundment	<1,000 tons capacity \$2,500.00 <u>\$20,000.00</u>	≥ 1,000 tons capacity \$3,000.00 <u>\$25,000.00</u>
S05 Drip Pad	<u>\$5,000.00</u>	
S03 Waste Pile	<100 tons capacity \$1,500.00 <u>\$10,000.00</u>	≥ 100 tons capacity \$3,000.00 <u>\$15,000.00</u>
S06 <u>Waste Pile/</u> <u>(Containment Bldg.)</u>	<100 tons capacity <u>\$10,000.00</u>	≥ 100 tons capacity <u>\$15,000.00</u>

DISPOSAL

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

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

TREATMENT

EPA CODE ACTIVITY	FEE	FEE
T01 Tank	<100 tons capacity \$4,000.00 <u>\$5,000.00</u>	≥100 tons capacity \$3,000.00 <u>\$7,500.00</u>
T02 Surface Impoundment	<1,000 tons/year \$2,500.00 <u>\$20,000.00</u>	≥1,000 tons/year \$3,000.00 <u>\$25,000.00</u>
T03 Incinerator	<1,000 tons/year \$1,000.00 <u>\$10,000.00</u>	≥1,000 tons/year \$3,000.00 <u>\$15,000.00</u>
T80 thru T93 Boiler/Industrial Furnace	<1,000 tons/year <u>\$10,000.00</u>	≥1,000 tons/year <u>\$15,000.00</u>
T04 Other	(Reserved) <u>\$10,000.00</u>	(Reserved) <u>\$15,000.00</u>
T-94 Containment Bldg. Treatment	<u>\$10,000.00</u>	<u>\$15,000.00</u>

EMERGENCY PERMITS

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

MISCELLANEOUS

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

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.

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

a.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.

a.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:

a.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.

a.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.

a.2.C. Voluntarily declaring the wastes as hazardous and subject to regulation.

a.2.D. Reviewing the exclusions at 40 CFR parts 261.2(e) and 261.4 to determine if their waste is excluded from regulation.

a.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.

a.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.

a.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.

a.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.

a.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.

a.6.A. Containers must be kept in good condition as defined by the United States department of transportation regulations.

a.6.B. Containers must be kept closed except when adding or removing waste.

a.6.C. Containers must be opened, handled and stored in a way which will not cause them to rupture or leak.

a.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.

a.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)

a.6.F. Storage containers for incompatible wastes must be separated by means of a dike, berm, wall or other device.

a.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.

a.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.

a.9. Labeling. Containers and tanks accumulating or storing hazardous waste must comply with the following labeling requirements:

a.9.A. On each container, the date upon which each period of accumulation began must be clearly marked and visible for inspection.

a.9.B. Each container and tank must be clearly labeled or marked with the words "hazardous waste" while in use on site.

a.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:

a.10.A. The type of waste and frequency of shipments are specified in the agreement;

a.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

a.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.

a.11. Record keeping. The small quantity generator must comply with the following record keeping requirements:

a.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.

a.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.

a.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.

a.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.

a.11.E. The chief, as he deems necessary, may require generators to furnish additional reports concerning the quantities and disposition of hazardous wastes.

a.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.

a.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:

a.12.A.1. An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

a.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.

a.12.A.3. Portable fire extinguishers, fire control equipment (including special extinguishing equipment), spill control equipment and decontamination equipment.

a.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.

a.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.

a.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.

a.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.

a.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.

a.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.

a.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.

a.12.E.3. Arrangements with state emergency response teams, emergency response contractors and equipment suppliers.

a.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.

a.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.

a.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.

a.12.H. The following information must be posted next to the telephone:

a.12.H.1. The name and telephone number of the emergency coordinator.

a.12.H.2. The location of fire extinguishers and spill control equipment and, if present, the fire alarm.

a.12.H.3. The telephone number of the fire department unless the facility has a direct alarm.

a.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.

a.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.

a.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:

a.12.K.1. The name, address and EPA identification number of the generator.

a.12.K.2 The date, time and type of incident.

a.12.K.3. Type and quantity of hazardous waste involved in the incident.

a.12.K.4. Extent of injuries, if any.

a.12.K.5. Estimated quantity and disposition of recovered materials, if any.

a.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.

a.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.

a.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.

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

b.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.

b.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.

b.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.

b.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.

b.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:

b.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.

b.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.

b.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:

b.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;

b.6.B. Is permitted, licensed or registered by a state other than West Virginia to manage waste generated by conditionally exempt small quantity facilities;

b.6.C. Beneficially uses or re-uses or legitimately recycles or reclaims the waste; or,

b.6.D. Treats the waste prior to beneficial use or re-use of legitimate recycling or reclamation.

b.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:

b.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.

b.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.

b.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.