

**TITLE 33
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WASTE MANAGEMENT**

**SERIES 20
HAZARDOUS WASTE MANAGEMENT SYSTEM**

§33-20-1. General.

1.1. Scope. – This rule establishes and adopts a program of regulation for 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. – W. Va. Code § 22-18-6.

1.3. Filing Date. – ~~March 8, 2018.~~

1.4. Effective Date. – ~~June 1, 2018.~~

1.5. Incorporation by Reference. – Whenever either federal statutes or regulations or State statutes or rules are incorporated by reference into this rule, the reference is to that statute or regulation in effect on ~~July 1, 2017~~ August 21, 2019 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.

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

1.5.a.1. “West Virginia Department of Environmental Protection” will be substituted for “Environmental Protection Agency.”

1.5.a.2. “Secretary of the West Virginia Department of Environmental Protection” will be substituted for “Administrator,” “Regional Administrator,” and “Director.” In those sections that are not adopted by reference or that are not delegable to the State, “Administrator,” “Regional Administrator,” and “Director” will have the meaning defined in 40 C.F.R. § 260.10.

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

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

1.6. This rule references the provisions of the West Virginia Department of Environmental Protection, Division of Air Quality rule, 45CSR25, “Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities” that is in effect on the date that this rule becomes effective.

~~1.7. This rule excludes the following federal rules from incorporation by reference: “Revisions to the Definition of Solid Waste” in Federal Register Vol. 73, No. 211, dated October 30, 2008 and “Definition of Solid Waste”, in Federal Register Vol. 80, No. 8, dated January 13, 2015.~~

§33-20-2. Hazardous Waste Management System: General.

2.1. 40 C.F.R. Part 260. – The provisions of 40 C.F.R. § 260 are hereby adopted and incorporated by reference with the modifications, exceptions, and additions set forth in this section.

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

2.1.a.1. “Full regulation” means those rules applicable to generators of greater than 1,000 kilograms of non-acutely hazardous waste in a calendar month and/or those generators that treat, store or dispose of hazardous waste at the facility.

2.1.a.2. “Stage” or “staging” means the temporary placement of off-site generated recyclable materials within a recycling facility for a period of time no longer than three days. Placement of recyclable materials for longer than three days is considered “storage.”.

2.1.a.3. In all matters related to implementation of the West Virginia Hazardous Waste Management Act and the rules promulgated thereunder, the term “conditionally exempt small quantity generator” shall have the same meaning as the term “very small quantity generator” as defined in 40 CFR § 260.10.

~~2.1.b. This rule excludes any and all changes to 40 C.F.R. §260 resulting from Federal Rule “Revisions to the Definition of Solid Waste,” in Federal Register Vol. 73, No. 211, dated October 30, 2008 and “Definition of Solid Waste”, in Federal Register Vol. 80, No. 8, dated January 13, 2015.~~

2.2. 40 C.F.R. §260.2. – The provisions of 40 C.F.R. §§ 260.2(a) and (b) are excepted from incorporation by reference herein. Availability of information provided under this rule is controlled by the provisions of W. Va. Code § 22-18-12.

2.3. 40 C.F.R. § 260.21(d). – The provisions of 40 C.F.R. § 260.21(d) are excepted from incorporation by reference in this rule.

2.4. Petitions for Waste Exclusions.

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

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

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

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

2.4.b.3. If, upon review of the itemized list of estimated costs submitted by the Department, the petitioner determines not to continue the petition process, the petitioner, if he wishes to withdraw the petition, shall submit a certified letter to the Secretary withdrawing the petition. If the letter is submitted within ten (10) days of the date of receipt of the Department's list of estimated costs, the petitioner will not be liable for any costs incurred in excess of the initial application fee.

2.4.c. Where the Administrator of the EPA has granted a petition to exclude hazardous waste from 40 C.F.R. § 261.3 or 40 C.F.R. part 261, Subpart D, pursuant to 40 C.F.R. § 260.22, the Secretary shall accept the determination and amend this rule accordingly, provided:

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

2.4.c.2. No scientifically supportable reasons for denying the petition are advanced that 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 shall petition the Secretary for an inclusion after having received approval from the Administrator of the Environmental Protection Agency. The petition will include:

2.5.a.1. A copy of the petition submitted to the Administrator of the Environmental Protection Agency pursuant to 40 C.F.R. § 260.23, including all demonstration information;

2.5.a.2. A copy of the Administrator's approval granting the petition under 40 C.F.R. § 260.23 and 40 C.F.R. § 260.20 and 40 C.F.R. Part 273; and

2.5.a.3. Any additional information that may be required for the Secretary to evaluate the petition.

2.5.b. Within one hundred twenty (120) days of the filing of the petition, the Secretary shall decide whether to approve or to deny the petition and so advise the petitioner. If the Secretary denies the petition is made, he or she shall notify the petitioner of the action in writing, setting forth the reasons therefor.

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

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

2.5.d.1. Submit a petition to the Secretary demonstrating that regulation under the universal waste regulations of 40 C.F.R. 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 shall also include information required by 40 C.F.R. § 260.20(b) and include as many of the factors listed in 40 C.F.R. § 273.81 as are appropriate for the waste or category of waste addressed in the petition.

2.5.d.2. The Secretary shall grant or deny a petition using the factors listed in 40 C.F.R. § 273.81. The decision will be based on the weight of evidence showing that regulation under 40 C.F.R. Part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the Hazardous Waste Program.

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

§33-20-3. Identification and Listing of Hazardous Waste.

3.1. 40 C.F.R. Part 261. – The provisions of 40 C.F.R. Part 261 are hereby adopted and incorporated by reference with the modifications, exceptions, and additions set forth in this section.

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

3.1.a.1. Provide a certification in writing to the Secretary that groundwater monitoring that either complies with 40 C.F.R. Part 265, Subpart F or that is agency approved is or will be in place at the wastewater treatment facility identified in 40 C.F.R. § 261.3(a)(2)(iv). The certification shall include a time schedule for the installation of groundwater monitoring. This requirement does not apply to wastewater treatment units or containers.

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

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

~~3.2. The provisions of 40 C.F.R. 262.14 (a)(5)(iv) and (v) are excepted from incorporation by reference. Very small quantity generators shall notify the Secretary of their hazardous waste activity in accordance with section 4 of this rule.~~

~~3.3. This rule excludes any and all changes to 40 C.F.R. part 261 resulting from Federal Rules: “Revisions to the Definition of Solid Waste” and “Definition of Solid Waste”, in Federal Register Vol. 80, No. 8, dated January 13, 2015.~~

§33-20-4. Notification of Hazardous Waste Activity Regulations.

4.1. Applicability. – Pursuant to 40 C.F.R. §262.18 any person engaging in any activity involving hazardous waste in the State of West Virginia shall notify the Secretary of those activities when they begin, unless those activities are exempted from the requirements of this rule.

4.2. Notification. Any person who notified EPA of its hazardous waste activities in the State of West Virginia shall provide a copy of that notification to the Secretary.

4.2.a. Any person exempted from the federal notification requirements as specified in 40 C.F.R. §§ 261.6(a)(2) and (3) and 262.14, remains subject to West Virginia notification requirements, and shall notify the Secretary in writing of hazardous waste activities on the date of initiation of those activities. Notification may be accomplished by using EPA Form 8700-12 or by providing the same information required by EPA Form 8700-12 in any other manner selected by the notifier.

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

4.2.c. 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.d. 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 those activities are exempted from the requirements of this rule.

§33-20-5. Standards Applicable to Generators of Hazardous Waste.

5.1. 40 C.F.R. Part 262. – The provisions of 40 C.F.R. Part 262 are hereby adopted and incorporated by reference with the modifications, exceptions, and additions contained in this section.

5.2. 40 C.F.R. §§ 262.10(g)(1) and 262.10 (g)(2). – The provisions of 40 C.F.R. §§ 262.10(g)(1) and 262.10 (g)(2) will be excepted from incorporation.

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

5.2.b. All references to 40 C.F.R. § 262.10(g) will be deemed references to subsection 5.2 of this rule and its subdivisions, as appropriate.

5.3. The provisions of 40 C.F.R. 262.14 (a)(5)(iv) and (v) are excepted from incorporation by reference.

5.34. 40 C.F.R. Part 262, Subpart H. – The provisions of 40 C.F.R. Part 262, Subpart H -- Transboundary Movements of Hazardous Waste for Recovery or Disposal are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.5.a above does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of Subpart H shall file with the Secretary copies of all documentation, manifests, exception reports, annual reports or records submitted to EPA, the Administrator or the Regional Administrator as required by and within the time frames set forth in subpart H.

§33-20-6. Standards Applicable to Transporters of Hazardous Waste.

6.1. 40 C.F.R. Part 263. – The provisions of 40 C.F.R. Part 263 are hereby adopted and incorporated by reference, insofar as those regulations relate to the transportation of hazardous waste by air and water.

6.2. Transportation of hazardous waste by railroad, roads, and highways is regulated by the West Virginia Public Service Commission rules, “Rules and Regulations Governing the Transportation of Hazardous Waste by Rail”, 150CSR11. The use of the state highways for the transportation of hazardous waste is also regulated by the West Virginia Division of Highways at 157CSR7, “Transportation of Hazardous Wastes upon the Roads and Highways.”.

§33-20-7. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

7.1. 45CSR25, Division of Air Quality. – The standards in this section apply to owners and operators of all facilities that treat, store or dispose of hazardous waste, except as otherwise provided by law. In addition to the standards in section 7 of this rule, 45CSR25, “Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities:” applies to hazardous waste management facilities that

may emit hazardous waste or the constituents thereof into the atmosphere, including incineration facilities, except as otherwise provided by law. For purposes of this section, the following persons are considered to be incinerating hazardous waste:

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

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

7.2. 40 C.F.R. Part 264. – The provisions of 40 C.F.R. Part 264 are hereby adopted and incorporated by reference with the modifications, exceptions, and additions set forth in this section.

7.3. Required Receipt of Identical Notification. – The provisions of 40 C.F.R. §§ 264.12(a)(1) and (2) are retained by the Environmental Protection Agency; however, the Secretary shall receive identical notification.

7.4. Releases from Solid Waste Management Units. – The provisions of 40 C.F.R. Part 264, Subpart F - Releases from ~~s~~Solid ~~w~~Waste ~~m~~Management ~~u~~Units are incorporated by reference with the following modifications, exceptions, and additions.

7.4.a. For purposes of 40 C.F.R. § 264.92, reference to the “Regional Administrator” will be to the Secretary of the Department of Environmental Protection. The Secretary establishes groundwater protection standards pursuant to the authority granted to the Secretary in W. Va. Code § 22-12-4.

7.4.b. For purposes of 40 C.F.R. § 264.94 and subparagraphs thereof, the agency rule on groundwater protection standards, 47CSR12, will apply as required pursuant to the authority granted the Secretary in W. Va. Code § 22-12-4.

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

7.4.c.1. The Secretary shall specify in the facility permit the frequencies for collecting samples required under 40 C.F.R. § 264.99(g). This frequency shall not be less than once annually.

7.5. Financial Requirement. – The provisions of 40 C.F.R. Part 264, Subpart H - Financial Requirements are adopted and incorporated by reference with the following modifications:

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

7.6. Provisions Relating to Incinerators. – The provisions of 40 C.F.R. §§ 264.341, 264.342, 264.343, 264.344, 264.345, and 264.347(a) relating to incinerators are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from incinerators. The Division of Air Quality retains its authority to enforce the air monitoring items listed in 40 C.F.R. § 264.347(a) related to incinerating hazardous waste. The Division of Water and Waste Management retains authority to enforce 40 C.F.R. §§ 264.347(b), (c), and (d). Consult the Division of Air Quality, 45CSR25, “Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities.”.

7.7. 40 C.F.R. Part 264, Subparts AA, BB, CC and 40 C.F.R. § 264.1080(f); and 40 C.F.R. § 264.1080(g). – The provisions of 40 C.F.R. § 264.1080(f) and 40 C.F.R. § 264.1080(g) are hereby adopted and incorporated by reference, and the remaining provisions of 40 C.F.R. Part 264, Subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding air emission standards for process vents, air emission standards for equipment leaks, and air emission standards for tanks, surface impoundments and containers.

§33-20-8. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

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

~~8.2. 40 C.F.R. §§ 265.12(a), 265.149, and 265.150. -- The provisions of 40 C.F.R. §§ 265.12(a)(1) and (2), 265.149, and 265.150 are excepted from incorporation by reference. The Secretary shall receive identical notification.~~

8.2 Required Receipt of Identical Notification. -- The provisions of 40 C.F.R. §§ 265.12(a)(1) and (2) are retained by the Environmental Protection Agency; however, the Secretary shall receive identical notification.

8.3 Financial Requirement. -- The provisions of 40 C.F.R. Part 265, Subpart H - Financial Requirements are adopted and incorporated by reference with the following modifications:

8.3.a. The provisions of 40 C.F.R. §§ 265.149 and 265.150 are excepted from incorporation by reference.

8.34. 40 C.F.R. §§ 265.341, 265.345, 265.347, 265.352. -- The provisions of 40 C.F.R. §§ 265.341, 265.345, 265.347, and 265.352 relating to incinerators are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from incinerators. The Division of Air Quality retains its authority to enforce the items listed in 40 C.F.R. § 265.347(a) related to incinerating hazardous waste. The Division of Water and Waste Management retains authority to enforce 40 C.F.R. §§ 265.347(b).

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

8.56. 40 C.F.R. Part 265, Subparts AA, BB, CC and 40 C.F.R. § 265.1080(f) and (g). -- The provisions of 40 C.F.R. § 265.1080(f) and (g) are hereby adopted and incorporated by reference, and the remaining provisions of 40 C.F.R. Part 265, Subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding air emission standards for process vents, air emission standards for equipment leaks, and air emission standards for tanks, surface impoundments and containers.

§33-20-9. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

9.1. 40 C.F.R. Part 266. -- The provisions of 40 C.F.R. Part 266 are hereby adopted and incorporated by reference. Consult the rules of the Division of Air Quality regarding Subpart H of this part.

§33-20-10. Land Disposal Restrictions.

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

10.2. 40 C.F.R. §§ 268.5, 268.6, 268.13, 268.42(b), and 268.44. -- The provisions of 40 C.F.R. §§ 268.5, 268.6, 268.13, 268.42(b), and 268.44 are excepted from incorporation by reference.

10.3. Definition of Administrator in 40 C.F.R. § 268.40(b). The term “Administrator” in 40 C.F.R. § 268.40(b) will retain its meaning as defined in 40 C.F.R. § 260.10.

§33-20-11. The Hazardous Waste Permit Program and Standardized Permit.

11.1. 40 C.F.R. Part 270. – The provisions of 40 C.F.R. Part 270, 40 C.F.R. ~~p~~Part 267, and 40 C.F.R. ~~p~~Part 124, Subpart G are hereby adopted and incorporated by reference with the modifications, exceptions, and additions set forth in this section.

11.2. 40 C.F.R. § 270.2 Definitions.

11.2.a. Definition of “RCRA permit”. – For purposes of this section, the term “RCRA permit” means “West Virginia Hazardous Waste Management Permit.”. The following additional requirements will apply to obtain a Hazardous Waste Management Permit in West Virginia. All references in 40 C.F.R. Part 270 and 40 C.F.R. Part 267 to 40 C.F.R. Part 124 will be deemed to be references to the applicable provisions of subsections 11.4 through 11.17 of this rule. To the extent of any inconsistency with 40 C.F.R. Part 270 and 40 C.F.R. Part 267, the specific provisions contained herein will control.

~~11.2.b. This rule excludes any and all changes to 40 C.F.R. part 270 resulting from Federal Rule “Revisions to the Definition of Solid Waste” in Federal Register Vol. 73, No. 211, dated October 30, 2008.~~

11.3. Application Fees.

11.3.a. Any person who applies for a permit for the construction or operation of a hazardous waste management facility, or both, shall submit as part of the application a money order or cashier’s check payable to “The Hazardous Waste Management Fund”. Persons required to obtain a permit-by-rule pursuant to this rule are not required to pay a permit application fee.

11.3.b. The fee will be determined by the schedule set forth in Table 1. If the cumulative total of application fees imposed under this section equals or exceeds fifty thousand dollars (\$50,000) then the person required to pay the fees may, at the person’s option, elect to submit the fee payments in installments over a three-year period. The installments submitted to the Department of Environmental Protection may not be less frequent than annually, and the amount submitted annually may not be less than one-third (1/3) of the total amount due.

11.3.c. The fee for permit renewal is the same as for an initial permit.

11.4. Pre-application Public Meeting and Notice.

11.4.a. Applicability. The requirements of this subsection will apply to West Virginia Hazardous Waste Management Part B permit applicants seeking initial permits for hazardous waste management units. The requirements of this section will also apply to West Virginia Hazardous Waste Management Part B permit applicants seeking renewal of permits for those units, when the renewal application is proposing a significant change in facility operations. For the purposes of this section, a “significant change” is any change that would qualify as a Class 3 permit modification (*See*, 40 C.F.R. § 270.42 for a description of permit modifications). The requirements of this section shall also apply to hazardous waste management facilities for which facility owners or operators are seeking coverage under a RCRA standardized permit (*See*, 40 CFR Part 270, Subpart J), including renewal of a standardized permit for such units, where the renewal is proposing a significant change in facility operations, as defined at 40 CFR § 124.211(c). The requirements of this section do not apply to permit modifications under 40 C.F.R. § 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

11.4.b. Prior to the submission of a West Virginia Hazardous Waste Management Part B permit application for a facility, or to the submission of a written Notice of Intent to be covered by a RCRA standardized permit (*See*, 40 CFR Part 270, Subpart J), the applicant shall hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

11.4.c. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection 11.4.b and copies of any written comments or materials submitted at the meeting, to the Department as a part of the Part B application, in accordance with 40 C.F.R. § 270.14(b), or with the written Notice of Intent to be covered by a RCRA standardized permit (*See*, 40 CFR Part 270, Subpart J).

11.4.d. The applicant shall provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant shall maintain, and provide to the Department upon request, documentation of the notice.

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

11.4.d.1.A. A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in paragraph 11.4.d.2, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Secretary shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Secretary determines that publication is necessary to inform the affected public. The notice shall be published as a display advertisement.

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

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

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

11.4.d.2. The notices required by paragraph 11.4.d.1 shall include:

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

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

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

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

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

11.5. Public Notice Requirements at the Application Stage.

11.5.a. Applicability. The requirements of this subsection apply to all West Virginia Hazardous Waste Management Part B permit applicants seeking initial permits for hazardous waste management units. The requirements of this section also apply to Hazardous Waste Management Part B permit applicants seeking renewal of permits for these units upon the expiration of the existing permit. The requirements of this section do not apply to hazardous waste units for which facility owners or operators are seeking coverage under a RCRA standardized permit (*See*, 40 CFR Part 270, Subpart J). The requirements of this section do not apply to permit modifications under 40 C.F.R. § 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

11.5.b. Notification. The Secretary shall provide public notice as required in subsection 11.5 when an applicant has submitted a Part B permit application. The Secretary shall provide public notice that a Part B permit application has been submitted to the Secretary and is available for review to:

11.5.b.1. The applicant;

11.5.b.2. All persons on a mailing list developed pursuant to subparagraph 11.11.d.1.D; and

11.5.b.3. The appropriate units of State and local government having jurisdiction over the area where the facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of the facility.

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

11.5.c. The Secretary shall publish the notice within a reasonable period of time after he or she receives the application. The notice shall include:

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

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

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

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

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

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

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

11.6. Information Repository.

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

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

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

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

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

11.6.f. The facility's owner/operator is responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Secretary. The Secretary shall close the repository at his or her discretion, based on the factors listed in subdivision 11.6.b.

11.7. Application for a Permit.

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

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

11.7.c. If the applicant fails or refuses to correct deficiencies in the application, the Secretary shall deny the permit and take appropriate enforcement actions pursuant to W. Va. Code §§ 22-18-15, 22-18-16, and 22-18-17.

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

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

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

11.7.f.1. Prepare a draft permit;

11.7.f.2. Give public notice;

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

11.7.f.4. Issue a final permit.

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

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

11.8.b. If the Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment or hearings. Denials by the Secretary may be appealed to the Environmental Quality Board in accordance with section 16 of this rule and W. Va. Code § 22-18-20.

11.8.b.1. If the Secretary initially decides to modify or revoke and reissue a permit under 40 C.F.R. §§ 270.41 (other than § 270.41(b)(3)) or 270.42 (c), he or she shall prepare a draft permit pursuant to subsection 11.9 below, incorporating the proposed changes. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, other than under 40 CFR § 270.41(b)(3), the Secretary shall require the submission of a new application. In the case of revoked or reissued permits under 40 CFR § 270.41(b)(3), the Secretary and the permittee shall comply with the appropriate requirements in 40 CFR Part 124, Subpart G for RCRA standardized permits.

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

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

11.8.c. If the Secretary decides to terminate a permit under 40 C.F.R. § 270.43, he or she shall issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit that follows the same procedures as any draft permit prepared under subsection 11.9 below.

11.9. Draft Permits.

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

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

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

11.9.c.1. All conditions under 40 C.F.R. §§ 270.30 and 270.32;

11.9.c.2. All compliance schedules under 40 C.F.R. § 270.33;

11.9.c.3. All monitoring requirements under 40 C.F.R. § 270.31; and,

11.9.c.4. Standards for treatment, storage, and disposal and other permit conditions under 40 C.F.R. § 270.30.

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

11.10. Fact Sheet.

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

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

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

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

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

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

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

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

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

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

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

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

11.11.a. Scope. The Secretary shall give public notice if the following actions have occurred:

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

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

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

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

11.11.d. The Secretary shall provide public notice of activities described in subdivision 11.11.a by the following methods:

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

11.11.d.1.A. The applicant;

11.11.d.1.B. The West Virginia Division of Water and Waste Management and the Division of Air Quality, if those agencies are required to issue a RCRA permit, an underground injection control (UIC) permit, a prevention of significant deterioration (PSD) permit or other permit under the Clean Air Act, and W.Va. Code §22-5-1, et seq., a National Pollutant Discharge Elimination System (NPDES) permit, or a sludge management permit for the same facility or activity;

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

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

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

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

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

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

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

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

11.11.d.3. By any manner constituting legal notice to the public under State laws; and

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

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

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

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

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

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

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

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

11.11.e.7. Any additional information considered by the Secretary to be necessary or proper.

11.11.f. Public notices for hearings. In addition to the general public notice described in subdivision 11.11.e, the public notice of a hearing shall contain the following information:

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

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

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

11.11.g. In addition to the general public notice described in subdivision 11.11.e, the Secretary shall send to all persons identified in subparagraphs 11.11.d.1.A through 11.11.d.1.F a copy of the fact sheet, the permit application, and the draft permit, as applicable.

11.12. Public Comments and Requests for Public Hearings.

11.12.a. During the public comment period provided under subsection 11.11, any interested person may submit written comments on the draft permit and may request a public hearing, if a hearing has not already been scheduled.

11.12.b. 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. The Secretary shall consider and respond to all relevant comments, as provided in subsection 11.16 below, in making the final decision.

11.13. Public Hearings.

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

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

11.13.c. The Secretary shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice under subdivision 11.11.c. Whenever possible, the Secretary shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.

11.13.d. The Secretary shall provide public notice of the hearing as specified in subsection 11.11.

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

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

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

11.14. Reopening of the Public Comment Period.

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

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

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

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

11.14.b. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under subsection 11.11 shall define the scope of the reopening.

11.14.c. The Secretary shall issue public notice of any of the above actions in accordance with subsection 11.11 above.

11.15. Issuance and Effective Date of Permit.

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

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

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

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

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

11.16. Response to Comments.

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

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

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

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

11.17. Administrative Record.

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

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

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

11.17.a.3. The fact sheet;

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

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

11.17.b. The Secretary shall base final permit decisions on the administrative record consisting of:

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

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

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

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

11.17.b.5. The response to comments required by subsection 11.16 that identify and support any change made in the draft permit and any new material placed in the record under that subsection;

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

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

11.17.b.8. The final permit.

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

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

11.18. Public Access to Information.

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

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

11.18.c. The person claiming confidentiality shall submit any document that contains information for which claim of confidentiality is made in a sealed envelope marked "CONFIDENTIAL" and addressed to the Secretary. The person claiming confidentiality shall submit the document in two separate parts. The first part shall contain all information that 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 that is claimed to be confidential.

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

11.18.e. The Secretary shall mark with the term "ACCEPTED" all information that meets the tests of subdivision 11.18.d and shall protect the same as confidential information. If the person fails to satisfactorily demonstrate to the Secretary that information in the form presented meets the criteria of subdivision 11.18.d, the Secretary shall mark the information "REJECTED" and promptly return it to the person who submitted the information. The Secretary shall retain a copy of the information for reference.

11.18.f. Nothing contained herein shall be construed to restrict the release of relevant confidential information during situations declared to be emergencies by the Secretary.

11.18.g. Nothing in subsection 11.18 shall be construed as limiting the disclosure of information by the Department to any officer, employee or authorized representative of State or federal government concerned with effectuating the purposes of this subsection.

11.18.h. Persons interested in obtaining information pursuant to this subsection shall submit a request in accordance with the Freedom of Information Act, W. Va. Code § 29B-1-1, et seq.

11.19. 40 C.F.R. § 270.12. The provisions of 40 C.F.R. § 270.12 are excepted from incorporation by reference herein. Availability of information provided under this rule is controlled by the provision of W. Va. Code §§ 22-18-12, 29B-1-1, et seq., and subsection 11.18 of this rule.

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

11.21. 40 C.F.R. § 270.60(b). The provisions of 40 C.F.R. § 270.60(b) are hereby adopted and incorporated by reference. Consult the rules of the Division of Water and Waste Management regarding additional requirements for underground injection wells.

11.22. 40 C.F.R. § 270.155. – The provisions of 40 C.F.R. § 270.155 relating to the administrative appeal of a decision to approve or deny a Remedial Action Plan (RAP) application are hereby modified for the purposes of this rule as follows: Any commenter on the draft RAP or notice of intent to deny or any participant in any public hearing(s) on the draft RAP may appeal the Secretary's decision to approve or deny the RAP application to the Environmental Quality Board pursuant to W. Va. Code § 22-18-20. Any person who did not file comments or did not participate in any public hearing(s) on the draft RAP may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of a RAP may be made to the same extent as for final permit decisions under section 11 of this rule. The Secretary shall give public notice of any grant of review of a RAP by the Environmental Quality Board through the same means used to provide notice under subsections 11.4 through 11.17 above.

§33-20-12. Deed and Lease Disclosure; Notice in Deed to Property.

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

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

12.1.b. Its use is restricted under 40 C.F.R. § 264.117(c).

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

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

§33-20-13. Universal Waste Rule.

13.1. 40 C.F.R. Part 273. – The provisions of 40 C.F.R. Part 273 are hereby adopted and incorporated by reference with the modifications, exceptions, and additions contained in this section.

13.2. 40 C.F.R. §§ 273.20, 273.40, and 273.56. – The provisions of 40 C.F.R. §§ 273.20, 273.40, and 273.56 relating to exports are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.6.a does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of 40 C.F.R. Part 273 shall file with the Secretary copies of all documentation, manifests, exception reports, annual reports or records submitted to EPA, the Administrator or the Regional Administrator as required by 40 C.F.R. Part 273.

13.3. 40 C.F.R. § 273.70. – The provisions of 40 C.F.R. § 273.70 “Imports” are hereby adopted and incorporated by reference. Persons managing universal waste that is imported to West Virginia are subject to the requirements of this rule.

13.4. 40 C.F.R. §§ 273.80 and 273.81. – The provisions of 40 C.F.R. §§ 273.80 and 273.81 are excepted from incorporation by reference. Consult the provisions of subdivision 2.5.d above to petition to include a waste as a universal waste.

§33-20-14. Standards for the Management of Used Oil.

14.1. 40 C.F.R. Part 279. – The provisions of 40 C.F.R. Part 279 are hereby adopted and incorporated by reference, with the exception contained in this section. Consult the rules of the Division of Air Quality regarding the burning of used oil.

14.2. 40 C.F.R. § 279.82(b). – Notwithstanding the provisions of paragraph 1.5.a.1 above, the term “EPA” at 40 C.F.R. §279.82(b) will mean United States Environmental Protection Agency.

§33-20-15. Standards for Hazardous Waste Recycling.

15.1. The provisions of 40 C.F.R. § 261.6 are hereby adopted and incorporated by reference, with the modifications contained in this section.

15.2. Standards Applicable to All Hazardous Waste Recycling Activities.

15.2.a. Any residual material resulting from a recycling process shall be evaluated in accordance with section 3 of this rule to determine whether it is subject to regulation as a hazardous waste.

15.2.b. Any facility that treats hazardous waste without recycling it, or that treats hazardous waste prior to recycling it, is subject to regulation under section 11 above. Generators that treat hazardous waste in containers or tanks in compliance with 40 C.F.R. §§ 262.16 and 262.17 are exempt from regulation under section 11 of this rule for that treatment activity.

15.2.c. Owners or operators of facilities with hazardous waste management units that recycle hazardous wastes are subject to section 7 of this rule.

15.3. Hazardous Waste Recycling at Off-Site Facilities.

15.3.a. Owners or operators of facilities that receive recyclable materials, stage recyclable materials, and recycle them without storing them before they are recycled are subject to:

15.3.a.1. The requirements of subsection 15.2 of this rule;

15.3.a.2. The generator requirements of section 5 of this rule; and

15.3.a.3. Financial Requirements. – Prior to staging any material, owners or operators shall demonstrate financial assurance for closure of the facility by:

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15.3.a.3.A. Maintaining a closure cost estimate that meets the requirements of 40 C.F.R. § 265.142 and that has been approved by the Secretary; and

15.3.a.3.B. Establishing financial assurance in accordance with 40 C.F.R. § 265.143.

15.3.b. Owners or operators of facilities that store recyclable materials before they are recycled are subject to section 11 of this rule and to all applicable provisions of sections 1, 3, and 5.

§33-20-16. Appeal Rights.

Any person aggrieved or adversely affected by the failure or refusal of the Secretary to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the Secretary under the provisions of this rule, may appeal to the Environmental Quality Board in accordance with the provisions of W. Va. Code §§ 22-18-22 and 22B-2-1, et seq.

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**TABLE 1
PERMIT APPLICATION FEE SCHEDULE**

STORAGE

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

DISPOSAL

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

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

TREATMENT

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

EMERGENCY PERMITS

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

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

MISCELLANEOUS

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

16.2. Surface Owner Protection.

16.2.a. General. Each person who conducts underground mining activities shall either adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this part shall be construed to prohibit the standard method of room-and-pillar mining.

16.2.b. Plan Requirements. The operator shall comply with all provisions of the approved subsidence control plan prepared pursuant to subsection 3.12 of this rule.

16.2.c. Material Damage. Material damage in the context of this section and 3.12 of this rule means: any functional impairment of surface lands, features, structures or facilities; any physical change that has a significant adverse impact on the affected land's capability to support current or reasonably foreseeable uses or causes significant loss in production or income; or any significant change in the condition, appearance or utility of any structure from its pre-subsidence condition. The operator shall:

16.2.c.1. Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence;

16.2.c.2. .Either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a non-cancelable premium-prepaid insurance policy. The requirements of this paragraph only apply to subsidence related damage caused by underground mining activities conducted after October 24, 1992; Provided, however, 16.2.c.2 does not create additional property rights nor may it be construed as vesting in the secretary the jurisdiction to adjudicate property rights disputes. and

16.2.c.3. Presumption of Causation. If alleged subsidence damage to any non-commercial or residential dwellings and structures related thereto occurs as the result of earth movement within the area which a pre-subsidence structural survey is required, a rebuttable presumption exist that the underground mining operation caused the damage.

16.2.c.3.A. If the permittee was denied access to the land or property for the purpose of conducting the pre-subsidence survey, no presumption of causation will exist.

16.2.c.3.B. The presumption will be rebutted if, for example, the evidence establishes that: the damage predated the mining in question; the damage was proximately caused by some other factors or was not proximately caused by subsidence; or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.

16.2.c.3.C. In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the Secretary.

16.2.c.4. Bonding for Subsidence Damage: The Secretary shall issue a notice to the permittee when subsidence related material damage has occurred to lands, structures, or when contamination, diminution or interruption occurs to a domestic or residential water supply, and that the permittee has ninety (90) days from the date of notice to complete repairs or replacement. The Secretary may extend the ninety (90) day abatement period but such extension shall not exceed one (1) year from the date of the notice. Provided, however, the permittee demonstrates in writing,

TITLE 38
LEGISLATIVE RULES
~~OFFICE DIVISION~~ OF MINING AND RECLAMATION
~~DIVISION DEPARTMENT~~ OF ENVIRONMENTAL PROTECTION

SERIES 2F
GROUNDWATER PROTECTION RULES COAL MINING OPERATIONS

§38-2F-1. General.

1.1. Scope. -- These rules establish a series of practices for the protection of groundwater which are to be followed by any person who conducts coal mining operations subject to the provisions of W. Va. Code §22-12-1 et seq. and subject to regulation under W. Va. Code §22-3, and/or under W. Va. Code §22-11, as it relates to coal mining operations.

1.2. Authority. -- W. Va. Code §22-12-5.

1.3. Filing Date. -- ~~May 13, 1994.~~

1.4. Effective Date. — ~~June 1, 1994.~~

§38-2F-2. Definitions. As used in these rules, unless used in a context that clearly requires a different meaning, the term:

2.1. Act means the West Virginia Groundwater Protection Act, W. Va. Code §22-12-1 et seq.

2.2. Coal Mining Operation means any facility or activity which falls within the definition of "surface mine," "surface mining," or "surface mining operations" set forth in W. Va. Code §22-3-(3)(u).

2.3. Contaminant means any material in a solid, liquid or gaseous state that has the potential to cause contamination.

2.4. Contamination means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the groundwater, resulting from activities regulated under this rule, in excess of existing groundwater quality, unless that activity or site has: (1) been exempted pursuant to subsection 5(h) of the Act; (2) has been granted a deviation or variance from existing quality as provided for in the Act; or (3) is subject to an order, permit, or other regulatory action that requires restoration or maintenance of groundwater quality at a different concentration level.

2.5. Director means the ~~Director~~ Secretary of the ~~Division~~ Department of Environmental Protection or the ~~Director's~~ Secretary authorized designee.

2.6. Groundwater means the water occurring in the zone of saturation beneath the seasonal high water table, or any perched water zones.

2.7. Impoundment means an area which is a natural topographic depression, man-made excavation, or diked area that is designed or improved in such a manner so as to hold an accumulation of contaminated surface runoff, process wastewater, product, or sewage, or any other liquid substance that could contaminate groundwater.

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2.8. Liner means a continuous layer of natural or man-made materials beneath and on the sides of an area which restricts the downward or lateral escape of contaminants.

2.9. Permit means any license, certification, registration, permit, or any other approval granted by an agency authorized to regulate coal mining facilities or activities which may have an impact on groundwater.

2.10. Practice means any action which is protective of groundwater.

2.11. Secondary Containment means utilizing dikes, berms, synthetic or natural liner systems, double-walled containment vessels, or any combination thereof to prevent contaminants from accidentally discharging into the environment.

2.12. Exempted coal mining operations means those operations subject to the exemption set forth in W. Va. Code, '22-12-5(h), and which are of an earth disturbing nature resulting from and directly related to coal extraction. Exempted coal mining operations include: coal and slurry impoundments; refuse areas and on-site haulways.

§38-2F-3. Groundwater Protection Plans and Practices for Coal Mining Operations.

3.1. Hydrologic and water quality protection practices established under the authority of W. Va. Code §22-11 or W. Va. Code §22-3 or W. Va. Code §22-30 and the legislative rules promulgated thereunder, were enacted in part to protect groundwater and are hereby incorporated by reference into this rule.

3.2. All coal mining operations which are not subject to the exemption set forth in subsection (h), Section 5 of the Act, shall conduct groundwater protection practices, and prepare and implement groundwater protection plans, as set forth in this rule. All exempted coal mining operations must conduct groundwater protection practices consistent with W. Va. Code §22-11-1 et seq, and W. Va. Code §22-3-1 et seq. Exempted operations are not subject to the existing quality or to the related provisions of subsections (f) and (g), Section 5 of the Act. Further, exempted operations are not subject to water quality standards promulgated by the Environmental Quality Board pursuant to the Act. Such operations shall nonetheless be designed, constructed, operated, maintained, and closed in such manner as to reasonably protect groundwater from contamination.

3.3. Groundwater Protection Plans.

3.3.a. Each groundwater protection plan shall at a minimum contain the following:

3.3.a.1. An inventory of all operations and activities that are not exempted operations and may reasonably be expected to contaminate groundwater, and an indication of the current existence of and the potential for groundwater contamination. These include, but are not limited to, evaluation of materials handling areas, loading and unloading areas, equipment cleaning, maintenance activities, pipelines carrying contaminants, sumps and tanks containing contaminants.

3.3.a.2. A description of new and/or existing controls or activities to protect groundwater from the identified potential contamination sources.

3.3.a.3. Schedules and procedures for employee training addressing the prevention of groundwater contamination.

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3.3.a.4. Provisions for inspections to be conducted by the operator at least every six (6) months to ensure that all elements of the coal mining operation's groundwater protection program are in place, properly functioning, and appropriately managed.

3.3.a.5. Groundwater monitoring procedures as deemed appropriate for the facility and/or as required by the ~~Director~~ Secretary

3.3.a.6. A discussion of all information reasonably available to the facility/activity regarding existing groundwater quality at, or which may be affected by, the site.

3.3.b. Within one year of the effective date of these rules all existing non-exempt coal mining operations shall complete and implement a groundwater protection plan; provided, that the groundwater protection plan shall be included with any new permit application submitted under W. Va. Code §22-3 or W. Va. Code §22-11, ninety (90) days or later after the effective date of these rules or with any permit renewal application submitted one (1) year or more after the effective date of these rules; provided, further, that the ~~Director~~ Secretary may waive the requirement for a groundwater protection plan for an operation which has been granted Phase II bond release in accordance with W. Va. Code §22-3, if he finds that such is not necessary for the purposes of the Act.

3.3.c. The groundwater protection plan may be integrated with the statement of probable hydrologic consequences and the hydrologic reclamation plan required by W. Va. Code §22-3 and rules promulgated pursuant thereto.

3.3.d. A copy of the groundwater protection plan shall be kept on-site, or at the operator's nearest readily accessible office, and shall be made available for review by the ~~Director~~ Secretary upon request. A copy or copies of the plan shall be provided for ~~Division~~ Department review and/or files upon request by the ~~Director~~ Secretary.

3.3.e. The ~~Director~~ Secretary may require modification to groundwater protection plans to assure adequate protection of groundwater. Further, the ~~Director~~ Secretary may during review of a groundwater protection plan require such other information as he reasonably needs to evaluate the plan.

3.3.f. In addition to the basic groundwater protection plan requirements, each plan shall address the specific requirements set forth in subsections 5 and 6 of this section to the extent the operation includes such areas or features.

3.3.g. Adherence to a groundwater protection plan does not relieve the facility/activity of any obligation to comply with any other state, federal or local rule, regulation, law or act.

3.4. Groundwater Protection Practices for Non-Coal Loading and Unloading Areas; Distribution and Bulk Facilities.

3.4.a. Loading and unloading stations including but not limited to areas used to load and unload drums, trucks, and railcars shall have spill prevention and control facilities and procedures, as well as secondary containment if appropriate or if otherwise required. Spill containment and cleanup equipment shall be readily accessible.

3.4.b. Distribution facilities and bulk containers shall be designed/installed in such a manner so as to prevent spills and leaks from contaminating groundwater.

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3.5. Groundwater Protection Practices for Pipelines, Ditches, Pumps, and Drums.

3.5.a. Pipelines conveying materials which have the potential to contaminate groundwater shall preferentially be installed above ground.

3.5.b. Ditches shall not be installed as primary conveyances for materials which have the potential to contaminate groundwater unless provided with appropriate liners.

3.5.c. Pumps and ancillary equipment (e.g., valves, flanges, filters, condensate lines and instrumentation) handling materials that have the potential to contaminate groundwater shall be selected and installed to prevent or contain any spills or leaks.

3.5.d. Drums, containing materials that have the potential to contaminate groundwater, shall be stored so that spills and leaks are contained. Measures shall be taken to control drum deterioration and/or damage due to handling.

3.6. Groundwater Protection Practices for Sumps and Tanks.

3.6.a. Above-ground storage tanks shall have secondary containment that is appropriate considering the potential to contaminate groundwater. Such secondary containment shall be adequately designed and constructed to contain the materials for a time sufficient to allow removal and disposal without additional contamination of groundwater, but in no case will that time be less than seventy-two (72) hours.

3.6.b. Underground tanks containing materials which have the potential to contaminate groundwater shall be designed, constructed, and operated utilizing leak detection or secondary containment, or other appropriate controls that are capable of preventing groundwater contamination.

3.6.c. New tanks containing materials that have the potential to contaminate groundwater may only be installed underground for overriding safety, legal, security, or fire protection concerns.

3.6.d. Sumps containing materials which have the potential to contaminate groundwater shall be designed, constructed, and operated utilizing leak detection or secondary containment, or other appropriate controls that are capable of preventing groundwater contamination.

3.6.e. Secondary containment is not required for sumps and tanks used only as secondary containment for other facilities.

§38-2F-4. Monitoring.

4.1. Pursuant to W. Va. Code §22-3 and W. Va. Code §22-11, the ~~Director~~ Secretary may require placement and maintenance of a reasonable number of groundwater monitoring stations (such as piezometers, monitoring wells, or springs) at coal mining operations in order to monitor for groundwater contamination and water levels. Existing facilities not currently monitoring groundwater shall do so if required by the ~~Director~~ Secretary.

4.2. In addition to the base line groundwater information required by CSR 38-2-3.22 and monitoring required by CSR 38-2-14.7, the ~~Director~~ Secretary may require such other base line data and monitoring as he determines appropriate to meet the requirements of these, rules or the Act. A waiver of groundwater monitoring granted under CSR 38-2-14.7(c) may operate as a waiver for the purposes of these, rules and the Act if, in addition to the demonstration required by CSR 38-2-14.7(c), the applicant demonstrates, and

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the ~~Director~~ Secretary finds in writing that monitoring is not necessary for the purposes of the Act or these rules.

4.3. Groundwater monitoring stations shall be located and maintained, or drilled, constructed, and maintained in a manner that allows accurate determination of groundwater quality and levels, and prevents contamination of groundwater through the finished well hole or casing.

4.4. Groundwater monitoring stations shall be designed and installed in accordance with applicable rules promulgated pursuant to the Act.

4.5. All groundwater monitoring stations shall be accurately located, utilizing latitude and longitude, by surveying or other acceptable means, and the coordinates shall be included with all data collected.

4.6. Data Management - The ~~Director~~ Secretary may at his discretion require submittal of any or all groundwater monitoring data collected in association with a regulated activity, and may further specify an electronic format in which the data is to be submitted.

§38-2F-5. Fees.

5.1. Coal mining operations shall be subject to the fee schedule and fee payment requirements as set forth in CSR 47-55-1 et seq. Failure to remit fees when and as due is a violation of these rules.

§38-2F-6. Prohibitions.

6.1. It shall be unlawful for any person, unless an authorization has been issued by a groundwater regulatory agency, to deliberately allow crude oil, or any petroleum product derived from crude oil, or septage, or natural gas, or salt water, or any chemical mixture which may contaminate groundwater to escape from any well, pipeline, impoundment, storage tank, treatment unit, equipment, or storage container, or to deliberately allow such materials to flow onto or under the land surface in a manner that could contaminate groundwater.

Note: 47CSR11 requires all spills and accidental discharges to be reported by calling 1-800-642-3074.

§38-2F-7. Enforcement.

7.1. Any person who violates the Act or these rules shall be subject to applicable civil and criminal penalties, injunctive relief, enforcement orders, and procedures as set forth in section 10 of the Act.

7.2. The appeal and review procedures set forth in section 11 of the Act shall be applicable to actions arising under these rules.

7.3. Civil penalties for violations of these rules shall be assessed by the ~~Director~~ Secretary in accordance with CSR 47-56.

7.4. Violations by a coal operator, arising from acts or omissions subject solely to these, rules or the Act, shall not be counted toward a pattern of violations or in determining the history of violations pursuant to W. Va. Code §22-3, and rules pursuant thereto.

§38-2F-8. Remediation.

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8.1. For all non-exempt coal mining operations, The ~~Director~~ Secretary may conduct or order other persons to conduct remedial actions which are appropriate to the type and extent of contamination, and which are subject to applicable permit conditions and variances and deviations from existing water quality and water quality standards that are allowed under the Act. The ~~Director~~ Secretary encourages agreements for investigation and cleanups in appropriate cases.

8.2. The use of permanent solutions to the maximum extent practical to correct groundwater contamination is preferred.

8.3. Cleanup actions shall not rely primarily on dilution and dispersion of the substance if active remedial measures are technically and economically feasible, as determined by the ~~Director~~ Secretary. Natural attenuation of groundwater contamination may be an appropriate remediation response.

8.4. Adequate groundwater monitoring shall be conducted to demonstrate control and containment of the substance. The ~~Director~~ Secretary shall specify which parameters should be monitored in a remedial operation. The groundwater monitoring must continue until results assure adequate remedial action was taken.

8.5. In addition to any required remediation, the ~~Director~~ Secretary may order the facility or activity to mitigate or compensate for the loss of beneficial use of groundwater, or for any significant adverse impact to groundwater.

§38-2F-9. Applicability of Requirements.

9.1. The ~~Director~~ Secretary may, to the extent authorized by the Act, waive some or all of the requirements of this rule upon determining in writing that such requirements are not necessary to protect groundwater from contamination.

§38-2F-10. Appropriateness Study.

10.1. The Environmental Protection Advisory Council shall conduct a study and report back to the Joint Committee on Government and Finance on or before November 1, 1995. The study shall be an evaluation of the appropriateness and effectiveness of these rules and shall include any recommendations, modifications, or alternatives thereto.

45CSR8

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 8
AMBIENT AIR QUALITY STANDARDS

§45-8-1. General.

1.1. Scope. -- This rule establishes and adopts ambient air quality standards in West Virginia for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to the national primary and secondary ambient air quality standards established under Section 109 of the Clean Air Act and promulgated by the United States Environmental Protection Agency under 40 C.F.R. Part 50. National primary ambient air quality standards define levels of air quality which the Administrator judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. This rule also establishes and adopts ambient air monitoring reference methods and equivalent methods promulgated by the United States Environmental Protection Agency under 40 C.F.R. Part 53. The Secretary hereby adopts these standards and methods by reference. The Secretary also adopts the appendices to these standards and methods. These standards and methods are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator deems necessary to protect the public health and welfare.

1.2. Authority. -- W.Va. Code § 22-5-4.

1.3. Filing Date. -- ~~April 24, 2019.~~

1.4. Effective Date. -- ~~June 1, 2019.~~

1.5. Sunset Provision. -- Does not apply.

1.6. Incorporation by Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation this rule incorporates by reference 40 C.F.R. Part 50, "National Primary and Secondary Ambient Air Quality Standards," and 40 C.F.R. Part 53, "Ambient Air Monitoring Reference and Equivalent Methods," effective June 1, 2018 2019.

§45-8-2. Definitions.

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

2.2. "Clean Air Act" or "CAA" means the federal Clean Air Act, 42 U.S.C. § 7401 et seq., as amended.

2.3. "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§ 22-1-6 or 22-1-8.

2.4. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 C.F.R. § 50.1. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

§45-8-3. Adoption of standards.

3.1. The Secretary hereby adopts and incorporates by reference the national primary and secondary ambient air quality standards promulgated by the United States Environmental Protection Agency under 40 C.F.R. Part 50, effective June 1, ~~2018~~ 2019. These standards are adopted for the purpose of establishing ambient air quality standards in West Virginia that are equivalent to those established under Section 109 of the Clean Air Act, as amended.

3.2. The Secretary hereby adopts and incorporates by reference the ambient air monitoring reference methods and equivalent methods promulgated by the United States Environmental Protection Agency under 40 C.F.R. Part 53, effective June 1, ~~2018~~ 2019. These standards are adopted for the purpose of establishing ambient air monitoring reference methods and equivalent methods in West Virginia.

§45-8-4. Inconsistency between rules.

4.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method, or rule.

45CSR16

**TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY**

**SERIES 16
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

§45-16-1. General.

1.1. Scope. -- This rule establishes and adopts standards of performance for new stationary sources promulgated by the United States Environmental Protection Agency pursuant to section 111(b) of the federal Clean Air Act, as amended. This rule codifies general procedures and criteria to implement the standards of performance for new stationary sources set forth in 40 C.F.R. Part 60. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

1.2. Authority. -- W.Va. Code § 22-5-4.

1.3. Filing Date. -- ~~April 24, 2019.~~

1.4. Effective Date. -- ~~June 1, 2019.~~

1.5. Sunset Provision. -- Does not apply.

1.6. Incorporation By Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart rule exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 C.F.R. Parts 60 and 65, to the extent referenced in 40 C.F.R. Part 60, effective June 1, ~~2018~~ 2019.

§45-16-2. Definitions.

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

2.2. "Clean Air Act" ("CAA") means the federal Clean Air Act, found at 42 U.S.C. § 7401 et seq.

2.3. "Secretary" means the Secretary of the Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§ 22-1-6 or 22-1-8.

2.4. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 C.F.R. Part 60. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

§45-16-3. Requirements.

3.1. No person may construct, reconstruct, modify, or operate or cause to be constructed, reconstructed, modified, or operated any source subject to the provisions of 40 C.F.R. Part 60 which results or will result in a violation of this rule.

§45-16-4. Adoption of standards.

4.1. Standards. -- The Secretary hereby adopts and incorporates by reference the provisions of 40 C.F.R. Parts 60 and 65, to the extent referenced in 40 C.F.R. Part 60, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. Parts 60 and 65, effective June 1, ~~2018~~ 2019, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

4.1.a. 40 C.F.R. § 60.9 is amended to provide that information shall be available to the public in accordance with W.Va. Code §§ 22-5-1 et seq., 29B-1-1 et seq., and 45CSR31; and

4.1.b. Subparts B, C, Ca, Cb, Cc, Cd, Ce, Cf, Ea, Eb, Ec, WWW, XXX, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM of 40 C.F.R. Part 60 shall be excluded.

4.1.c. The following subparts of 40 C.F.R. Part 60 relating to wood-burning heaters and appliances are expressly excluded and are not adopted or incorporated by reference in this rule:

4.1.c.1. The 2015 amendments to subpart AAA; and

4.1.c.2. Subpart QQQQ.

§45-16-5. Secretary.

5.1. Any and all references in 40 C.F.R. Parts 60 and 65 to the “Administrator” are amended to be the “Secretary” except as follows:

5.1.a. Where the federal regulations specifically provide that the Administrator shall retain authority and not transfer authority to the Secretary;

5.1.b. Where provisions occur which refer to:

5.1.b.1. Alternate means of emission limitations;

5.1.b.2. Alternate control technologies;

5.1.b.3. Innovative technology waivers;

5.1.b.4. Alternate test methods;

5.1.b.5. Alternate monitoring methods;

5.1.b.6. Waivers/adjustments to recordkeeping and reporting;

5.1.b.7. Emissions averaging;

5.1.b.8. Applicability determinations; or

5.1.b.9. The authority to require testing under Section 114 of the Clean Air Act, as amended;

or

5.1.c. Where the context of the regulation clearly requires otherwise.

§45-16-6. Permits.

6.1. Nothing contained in this adoption by reference shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way be limited or inapplicable.

§45-16-7. Inconsistency between rules.

7.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

DRAFT

45CSR25

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 25
CONTROL OF AIR POLLUTION FROM HAZARDOUS WASTE
TREATMENT, STORAGE AND DISPOSAL FACILITIES

§45-25-1. General.

1.1. Scope.

1.1.a. This rule establishes and adopts a program of regulation over air emissions and emission standards for the treatment, storage, and disposal of hazardous waste promulgated by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act, as amended. This rule codifies general procedures and criteria to implement emission standards set forth in the 40 C.F.R. Parts 260, 261, 262, 264, 265, 266, 270, and 279 as listed in Table 45-25 below. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications, and other test methods that are appended to these standards.

1.1.b. The purpose of this rule is to achieve and maintain levels of air quality that will protect the public health and safety and the environment from the effects of improper, inadequate or unsound treatment, storage or disposal of hazardous waste. Further, all persons engaged in the treatment, storage or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by hazardous waste or any constituent thereof in quantities that would cause ambient air concentrations that may be injurious to human health or welfare or that would interfere with the enjoyment of life or property.

1.1.c. Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonation of any emission that is released in any locality in a manner or amount that would cause or contribute to statutory air pollution. Neither does it exempt nor excuse any person from complying with other applicable laws, ordinances, regulations or orders of governmental entities having jurisdiction over hazardous waste treatment, storage or disposal facilities.

1.1.d. This rule is promulgated pursuant to W.Va. Code §§ 22-5-4 and 22-18-6. Recognizing that each article has its own enforcement sections, it is the intent of the Secretary that enforcement shall be implemented in accordance with W.Va. Code § 22-18-1, et seq., where practicable.

1.1.e. Permit applications shall be processed in accordance with the permitting procedures set forth in W.Va. Code § 22-18-1, et seq., 33CSR20, and this rule.

1.2. Authority. -- W.Va. Code §§ 22-5-4 and 22-18-6.

1.3. Filing Date. -- ~~April 24, 2019.~~

1.4. Effective Date. -- ~~June 1, 2019.~~

1.5. Sunset Provision. -- Does not apply.

1.6. Incorporation by reference.

45CSR25

1.6.a. Federal counterpart regulation. -- The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference the provisions contained in 40 C.F.R. Parts 260, 261, 262, 264, 265, 266, 270, and 279 as listed in Table 45-25 below, effective June 1, 2018 2019.

1.6.b. This rule incorporates by reference the provisions contained in 33CSR20, "Hazardous Waste Management System" that are in effect on the date this rule becomes effective, except for any provision in 33CSR20 that incorporates by reference the Code of Federal Regulations.

§45-25-2. Definitions.

2.1. "Air pollutants" means solids, liquids or gases which, if discharged into the air, may result in statutory air pollution.

2.2. "Air pollution" or "statutory air pollution" mean, and are limited to, the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner, and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

2.3. "Air pollution control equipment" means any equipment used for collecting or converting hazardous waste emissions for the purpose of preventing or reducing emissions of these materials into the open air from hazardous waste treatment, storage or disposal facilities.

2.4. "Best Available Control Technology" or "BACT" means an emission standard based on the maximum degree of reduction for each pollutant that would be emitted from any hazardous waste treatment, storage or disposal facility that the Secretary, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for the facility through application of production processes or available methods, systems or techniques. If the Secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. The standard shall, to the extent possible, set forth the emission reduction achievable by implementation of the design, equipment, work practice or operational standard and shall provide for compliance by means that achieve equivalent results.

2.5. "CAA" means the federal Clean Air Act, as amended; 42 U.S.C. § 7401, et seq.

2.6. "C.F.R." means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

2.7. "Department" or "DEP" means the West Virginia Department of Environmental Protection.

2.8. "Hazardous waste" means a hazardous waste as defined in 40 C.F.R. § 261.3.

2.9. "Infectious medical waste" shall have the meaning ascribed to it in 64CSR56 "infectious medical waste" promulgated by the West Virginia Bureau for Public Health.

2.10. "Pathological waste" means waste material consisting of only human or animal remains, anatomical parts or tissue, the bags or containers used to collect and transport the waste material, and animal bedding (if applicable).

2.11. "RCRA" means the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended; 42 U.S.C. § 6901, et seq.

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2.12. "RCRA Permit" means "West Virginia Hazardous Waste Management Permit". The following additional requirements shall apply to obtain a Hazardous Waste Management Permit in West Virginia. All references in 40 C.F.R. Part 270 to 40 C.F.R. Part 124 shall be deemed to be references to the applicable provisions of subsections 5.1 through 5.14 of this rule. To the extent of any inconsistency with 40 C.F.R. Part 270, the specific provisions contained herein shall govern.

2.13. "Secretary" means the Secretary of the West Virginia Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§ 22-1-6 or 22-1-8.

2.14. "U.S. EPA" means the United States Environmental Protection Agency.

2.15. Other words or phrases not herein defined and used in this rule shall have the meaning as ascribed in W. Va. Code §§ 22-5-2 or 22-18-3 or 33CSR20 "Hazardous Waste Management System" governing the State Hazardous Waste Management Act.

§45-25-3. Adoption of standards.

3.1. The Secretary hereby adopts and incorporates by reference the definitions, lists, tables, appendices, conditions, and requirements from 33CSR20, "Hazardous Waste Management System", effective June 1, ~~2018~~ 2019, except as follows:

3.1.a. Any provisions in 33CSR20 which incorporate by reference the Code of Federal Regulations (C.F.R.);

3.1.b. The application fees and permit requirements under 11.3 through 11.18, inclusive. The permit provisions under §45-25-5 shall apply exclusively to the Division of Air Quality permitting activities;

3.1.c. In case of a conflict between the Division of Air Quality and the Division of Water and Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Secretary has final administrative authority to resolve the conflict.

3.2. Unless otherwise indicated, the Secretary hereby adopts and incorporates by reference the provisions contained in 40 C.F.R. Parts 260, 261, 262, 264, 265, 266, 270, and 279 as listed in Table 45-25, including any reference methods, performance specifications and other test methods appended to these Parts and contained in Parts 60, 61, 63, 260, 261, 262, 264, 265, 266, 270, and 279, effective June 1, ~~2018~~ 2019, with the following modifications:

3.2.a. Whenever the term "United States" is used, it shall also mean the State of West Virginia;

3.2.b. Whenever the terms "Administrator," "Regional Administrator," "Assistant Administrator for Solid Waste and Emergency Response" or "Secretary" are used, the term means the Secretary of the West Virginia Department of Environmental Protection;

3.2.c. Whenever the term "Environmental Protection Agency" is used the term also means the West Virginia Department of Environmental Protection; and

3.2.d. The distance provisions of 40 C.F.R. § 265.382 apply only to the open burning or open detonation of military explosives in a manner that presents an uncontrolled fragment release hazard. The applicable distance provisions of the American Table of Distances for Commercial Explosives, and of the Department of Defense Contractors Safety Manual for Ammunition and Explosives (DOD 4145.26-M), in effect as of the effective date of this rule, apply otherwise.

§45-25-4. Requirements.

4.1. Owners and operators of hazardous waste treatment, storage, and disposal facilities regulated by the provisions of this rule shall maintain a list of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the Secretary, where appropriate:

4.1.a. Hazardous Waste Management Program under W. Va. Code § 22-18-1, et seq. and the rules promulgated thereunder;

4.1.b. Prevention of Significant Deterioration (PSD) Program under W. Va. Code § 22-5-1, et seq. and 45CSR14 or the CAA;

4.1.c. Nonattainment program under W. Va. Code § 22-5-1, et seq. and 45CSR19 or the CAA;

4.1.d. National Emission Standards for Hazardous Air Pollutants (NESHAP) preconstruction approval under W. Va. Code § 22-5-1, et seq. and 45CSR34 or the CAA;

4.1.e. Standards of Performance for New Stationary Sources under W. Va. Code § 22-5-1, et seq. and 45CSR16 or the CAA; and

4.1.f. Other relevant air pollution control permits, including local permits.

4.2. Owners and operators of hazardous waste treatment, storage and disposal facilities covered under this rule must comply with the personnel training requirements as specified by 40 C.F.R. § 264.16.

4.3. Owners and operators of hazardous waste tanks, containers, surface impoundments, landfills, waste piles, land treatment, miscellaneous units, thermal treatment units, incinerators, and boiler and industrial furnace facilities must design, construct, maintain, and operate these facilities to minimize the possibility of a fire, explosion or any unplanned, sudden or non-sudden release of hazardous waste constituents to the air which could threaten human health or the environment.

4.4. Owners and operators of Hazardous Waste Management facilities that treat, store or dispose of ignitable or reactive wastes or mix incompatible waste or incompatible wastes and other materials shall comply with the general requirements for ignitable, reactive or incompatible wastes set forth in 40 C.F.R. § 264.17.

4.5. The owners and operators of the hazardous waste treatment, storage, and disposal facilities shall manage all hazardous waste placed in a container in accordance with the applicable air emission requirements as listed in Table 45-25 below.

4.6. The owners and operators of the hazardous waste treatment, storage, and disposal facilities shall manage all hazardous waste placed in a tank in accordance with the applicable air emission requirements as listed in Table 45-25.

4.7. The owners and operators of the hazardous waste treatment, storage, and disposal facilities shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable air emission requirements as listed in Table 45-25.

4.8. The owners and operators of the hazardous waste treatment, storage, and disposal facilities shall manage all hazardous waste placed in a miscellaneous unit in accordance with the applicable air pollution standard requirements of 40 C.F.R. 264, including but not limited to subparts AA, BB, and CC.

4.9. A hazardous waste pile must be fully enclosed or otherwise designed to prevent dispersal of the

waste by wind.

4.10. Hazardous waste landfills must be covered or otherwise managed to prevent wind dispersal of the waste.

4.11. All landfills, surface impoundments, and land treatment facilities shall be located, designed, constructed, operated, maintained, and closed in a manner that will assure protection of human health and the environment. Protection of human health and the environment shall include prevention of adverse effects on air quality considering:

4.11.a. The volume and physical and chemical characteristics of the waste in the facility, including its potential for volatilization and wind dispersal;

4.11.b. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

4.11.c. The potential for health risks caused by human exposure to waste constituents;

4.11.d. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

4.11.e. The potential for interference with the enjoyment of life or property; and

4.11.f. The persistence and permanence of the potential adverse effects.

4.12. Owners and operators of hazardous waste treatment, storage or disposal facilities shall utilize best available control technology ("BACT") to limit the discharge of hazardous waste constituents to the atmosphere during:

4.12.a. Process turn-arounds;

4.12.b. Cleaning of process equipment;

4.12.c. Planned process shutdowns; and

4.12.d. Tank truck, railroad tank car, and barge cleaning.

4.13. The Secretary may, on a case-by-case basis, establish performance standards for hazardous waste combustion for control of emissions of metals, hydrogen halides, and elemental halogen, based on a finding that the standards are necessary to limit the emission rates of these constituents to levels that do not pose an unacceptable risk to human health and environment. The Secretary may require the following data from the permit applicant:

4.13.a. Emissions of POHCs, hazardous combustion by-products, metals, and hydrogen halides, including:

4.13.a.1. Mass emission rates from the stack, and

4.13.a.2. Concentration in the gas stream exiting the stack; and

4.13.b. Air dispersion estimates for those substances, including:

4.13.b.1. Meteorological data, and

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- 4.13.b.2. Description of the air dispersion models, and
- 4.13.b.3. Assumptions underlying the air dispersion models used; and
- 4.13.c. Expected human and environmental exposure, including:
 - 4.13.c.1. Topographic considerations,
 - 4.13.c.2. Population distributions,
 - 4.13.c.3. Population activities, and
 - 4.13.c.4. Modes, intensity, and duration of exposure; and
- 4.13.d. Consequences of exposure, including:
 - 4.13.d.1. Dose-response curves for carcinogens,
 - 4.13.d.2. Health effects based on human or animal studies for other toxic constituents,
 - 4.13.d.3. Potential for accumulation of toxic constituents in the human body, and
 - 4.13.d.4. Statements of expected risk to individuals or populations.

4.14. Emergency Permit. -- Notwithstanding any other provision in 40 C.F.R. § 270.61, in the event the Secretary finds an imminent and substantial danger to human health or the environment, the Secretary may issue a temporary permit to a facility to allow treatment, storage or disposal of hazardous waste at a non-permitted facility or hazardous waste not covered by the permit for a facility with an effective permit. This emergency permit:

- 4.14.a. May be oral or written. If oral, it shall be followed within five (5) days by written emergency permit;
- 4.14.b. Shall not exceed ninety (90) days in duration;
- 4.14.c. Shall clearly specify the hazardous wastes to be received and the manner and location of the treatment, storage or disposal;
- 4.14.d. May be terminated by the Secretary at any time without prior notice, if the Secretary determines that termination is appropriate to protect human health or the environment; and
- 4.14.e. Shall be accompanied by public notice that includes the following:
 - 4.14.e.1. Name and address of the office granting the emergency authorization,
 - 4.14.e.2. Name and location of the permitted Hazardous Waste Management facility,
 - 4.14.e.3. A brief description of the wastes involved,
 - 4.14.e.4. A brief description of the action authorized and reasons for authorizing it, and
 - 4.14.e.5. Duration of the emergency permit; and
- 4.14.f. Shall incorporate, to the extent possible and not inconsistent with the emergency situation,

all applicable requirements of this rule.

4.15. Pathological Waste Incinerators. -- The owner or operator of a pathological waste incinerator is not subject to the requirements of this rule, unless the incinerator is charged with any mixture of infectious medical waste and hazardous waste listed in 40 C.F.R. 261, Subpart D. The owner or operator of a pathological waste incinerator shall design, construct, and operate the facility in accordance with all applicable rules promulgated by the Secretary including, but not limited to, this rule, 45CSR6, 45CSR13, 45CSR14, 45CSR18, 45CSR19, 45CSR30, and 45CSR34, as applicable.

§45-25-5. Permit Process.

5.1. Pre-application public meeting and notice.

5.1.a. Applicability. -- The requirements of subsection 5.1 shall apply to West Virginia Hazardous Waste Management Part B permit applications seeking initial permits for Hazardous Waste Management units. These requirements shall also apply to West Virginia Hazardous Waste Management Part B permit applications seeking renewal of permits for Hazardous Waste Management units, where the renewal application is proposing a significant change in facility operations. A “significant change” is any change that would qualify as a Class 3 permit modification pursuant to 40 C.F.R. § 270.42. These requirements do not apply to permit modifications under 40 C.F.R. § 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

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

5.1.c. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subdivision 5.1.b and copies of any written comments or materials submitted at the meeting, to the Secretary for inclusion with the Part B application, in accordance with 40 C.F.R. § 270.14(b).

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

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

5.1.d.1.A. A newspaper advertisement. -- The applicant shall publish a notice, fulfilling the requirements in paragraph 5.1.d.2, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Secretary shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Secretary determines that the publication is necessary to inform the affected public. The notice must be published as a display advertisement;

5.1.d.1.B. A visible and accessible sign. -- The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph 5.1.d.2. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site;

5.1.d.1.C. A broadcast media announcement. -- The applicant shall broadcast a notice, fulfilling the requirements in paragraph 5.1.d.2, at least once on at least one local radio station or television

station. The applicant may employ another medium with prior approval of the Secretary; and

5.1.d.1.D. A notice to the Department. -- The applicant shall send a copy of the newspaper notice to the Secretary and to the appropriate units of state and local government having jurisdiction over the area where the facility is or is proposed to be located and to each state agency having any authority under state law with respect to the construction or operation of the facility.

5.1.d.2. The notices required under paragraph 5.1.d.1 must include:

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

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

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

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

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

5.2. Public notice requirements at the application stage.

5.2.a. Applicability. -- The requirements of subsection 5.2 shall apply to all West Virginia Hazardous Waste Management Part B permit applications seeking initial permits for Hazardous Waste Management units. These requirements shall also apply to Hazardous Waste Management Part B permit applications seeking renewal of permits for Hazardous Waste Management units upon the expiration of the existing permit. These requirements do not apply to permit modifications under 40 C.F.R. § 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.2.b. Notification at application submittal. -- The Secretary shall provide public notice as required in subsection 5.2 when a Part B permit application has been submitted. The Secretary shall provide public notice to:

5.2.b.1. The applicant;

5.2.b.2. All persons on a mailing or e-mail list developed under subparagraph 5.8.d.1.D;

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

5.2.b.4. Any person otherwise entitled to receive notice under subdivision 5.2.b may waive the right to receive notice for any classes and categories of permits.

5.2.c. The notice shall be published within 30 days after the complete application is received by the Secretary. The notice must include:

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

5.2.c.2. The name and telephone number of the Secretary's contact office and a mailing and e-mail address to which information, opinions, and inquiries may be directed throughout the permit review

process;

5.2.c.3. An address to which people can write in order to be put on the facility mailing or e-mail list;

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

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

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

5.2.d. Concurrent with the notice required under subdivision 5.2.b, the Secretary must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the Department's headquarters.

5.3. Information repository.

5.3.a. Applicability. -- The following requirements apply to all applicants seeking West Virginia Hazardous Waste Management Permits for Hazardous Waste Management units.

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

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

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

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

5.3.f. The facility owner or operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Secretary. The Secretary may close the repository at his or her discretion, based on the factors in subdivision 5.3.b.

5.4. Application for a permit.

5.4.a. Any person who requires a permit shall complete, sign, and submit to the Secretary an appropriate application. Applications are not required for hazardous waste permits by rule issued by U.S. EPA pursuant to 40 C.F.R. § 270.60. The Secretary shall not begin processing a permit application until the applicant has fully complied with the application requirements for that permit. Permit applications must comply with the signature and certification requirements of 40 C.F.R. § 270.11.

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

5.4.c. If the applicant fails or refuses to correct deficiencies in the application, the Secretary may deny the permit and may take appropriate enforcement actions under the applicable statutory provisions of W.Va. Code §§ 22-18-1, et seq. and 22-5-1, et seq.

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

5.4.e. The effective date of an application is the date on which the Secretary notifies the applicant that the application is complete as provided for in subdivision 5.4.b.

5.4.f. For each application, the Secretary shall, no later than the date the Secretary receives a complete application, prepare and mail or e-mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Secretary intends to:

5.4.f.1. Prepare a draft permit;

5.4.f.2. Give public notice;

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

5.4.f.4. Issue a final permit.

5.5. Modification, revocation and reissuance or termination of permits.

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

5.5.b. If the Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment or hearing. Denials by the Secretary may be appealed to the Air Quality Board in accordance with W. Va. Code § 22B-1-1, et seq. and 22B-2-1, et seq.

5.5.b.1. If the Secretary initially decides to modify or revoke and reissue a permit under 40 C.F.R. §§ 270.41 or 270.42(c), he or she shall prepare a draft permit under subsection 5.6 below incorporating the proposed changes. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the Secretary shall require the submission of a new application.

5.5.b.2. In a permit modification, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

5.5.b.3. "Classes 1 and 2 modifications" as defined in 40 C.F.R. §§ 270.42(a) and (b) are not subject to the requirements of this subsection.

5.5.c. If the Secretary decides to terminate a permit under 40 C.F.R. § 270.43, he or she shall issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit that follows the same procedures as any draft permit prepared under subsection 5.6 below.

5.6. Draft permits.

5.6.a. Once an application is complete, the Secretary shall decide whether to prepare a draft permit or to deny the application.

5.6.b. If the Secretary decides to deny the permit application, he or she shall issue a Notice of Intent to Deny. A Notice of Intent to Deny the permit application is a type of draft permit which follows the same procedures as a draft permit. If the Secretary's final decision is that the initial decision to deny the permit application was incorrect, he or she shall withdraw the Notice of Intent to Deny and proceed to prepare a draft permit.

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

5.6.c.1. All conditions under 40 C.F.R. §§ 270.30 and 270.32;

5.6.c.2. All compliance schedules under 40 C.F.R. § 270.33;

5.6.c.3. All monitoring requirements under 40 C.F.R. § 270.31; and

5.6.c.4. Standards for treatment, storage, disposal, and other permit conditions under 40 C.F.R. § 270.30.

5.6.d. All draft permits prepared by the Secretary shall be accompanied by a fact sheet if required under subdivision 5.7.a and shall be based on the administrative record, publicly noticed and made available for public comment.

5.6.e. In addition to the requirements of subsection 5.6, public notice of the preparation of a draft permit shall be given by the methods contained in the applicable Federal Regulation.

5.7. Fact Sheet.

5.7.a. The Secretary shall prepare a fact sheet for each draft permit that he or she finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, and methodological and policy questions considered in preparing the draft permit. The Secretary shall send the fact sheet to the applicant and to anyone who requests it.

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

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

permit;

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

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

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

5.7.b.5. A description of the process for reaching a final decision on a draft permit, including;

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

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

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

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

5.8. Public notice of permit actions and public comment period.

5.8.a. Scope. -- The Secretary shall give public notice if the following actions have occurred:

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

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

5.8.b. No public notice is required when the Secretary denies, pursuant to subsection 5.5, a request for permit modification, revocation and reissuance, or termination. The Secretary shall provide written notice of that denial to the requester and to the permittee.

5.8.c. Timing. -- Public notice of the preparation of a draft permit, including a Notice of Intent to Deny a Permit Application, required under subdivision 5.8.a shall allow at least forty-five (45) days for public comment. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

5.8.d. Methods. -- The Secretary shall provide public notice of activities described in subdivision 5.8.a by the following methods:

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

5.8.d.1.A. The applicant;

5.8.d.1.B. The West Virginia Division of Water and Waste Management and the Division of Air Quality, if those agencies are required to issue a RCRA permit, an underground injection control (UIC) permit, a prevention of significant deterioration (PSD) permit or other permit under the Clean Air

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Act and W.Va. Code § 22-5-1 et seq., a National Pollutant Discharge Elimination System (NPDES) permit, or a sludge management permit for the same facility or activity;

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

5.8.d.1.D. Persons on a mailing or e-mail list developed by:

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

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

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

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

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

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

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

5.8.d.4. 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 or medium to elicit public participation.

5.8.e. Public notices. -- All public notices issued shall contain the following minimum information:

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

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

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

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

5.8.e.5. A brief description of the comment procedures required by subsections 5.9 and 5.10 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final decision;

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

5.8.e.7. Any additional information considered necessary or proper by the applicant and the Secretary.

5.8.f. Public notices for hearings. -- In addition to the general public notice described in subdivision 5.8.e, the public notice of a hearing shall contain the following information:

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

5.8.f.1.A. Date, time, and place of the hearing; and

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

5.8.g. In addition to the general public notice described in subdivision 5.8.e, the Secretary shall mail or e-mail to all persons identified in subparagraphs 5.8.d.1.A, 5.8.d.1.B, and 5.8.d.1.C a copy of the fact sheet, the permit application, and the draft permit, as applicable.

5.9. Public comments and requests for public hearing. -- During the public comment period provided under subsection 5.8, 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 state the nature of the issues proposed to be raised in the hearing. The Secretary shall consider all comments in making the final decision and shall respond to the comments as provided in subsection 5.13.

5.10. Public hearings.

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

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

5.10.c. The Secretary shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under subdivision 5.8.c. Whenever possible the Secretary shall schedule a hearing at a location convenient to the nearest population center to the proposed facility.

5.10.d. The Secretary shall provide public notice of the hearing as specified in subsection 5.8.

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

5.10.f. Any person may submit oral or written statements and data concerning the draft permit. The Secretary may set reasonable limits on the time allowed for oral statements and may require the submission of statements in writing. The public comment period under subsection 5.8 shall automatically be extended to the close of any public hearing. The Secretary may also extend the comment period by so stating at the hearing.

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

5.11. Reopening of the public comment period.

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

5.11.a.1. Prepare a new draft permit, appropriately modified, under subsection 5.6;

5.11.a.2. Prepare a revised fact sheet under subsection 5.7 and reopen the comment period;
and

5.11.a.3. Reopen or extend the comment period under subsection 5.11 to give interested persons an opportunity to comment on the information or arguments submitted.

5.11.b. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under subsection 5.8 shall define the scope of the reopening.

5.11.c. The Secretary shall issue public notice of any of the above actions in accordance with subsection 5.8.

5.12. Issuance and effective date of permit.

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

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

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

5.12.b.2. An interested party requests review or an evidentiary hearing; or

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

5.13. Response to comments.

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

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

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

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

5.14. Administrative record.

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5.14.a. The provisions of a draft permit prepared under subsection 5.6 shall be based on the administrative record consisting of:

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

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

5.14.a.3. The fact sheet if required;

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

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

5.14.b. The Secretary shall base final permit decisions on the administrative record consisting of:

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

5.14.b.2. All comments received during the public comment period provided under subsection 5.5, including any extension or reopening under subsection 5.11;

5.14.b.3. The tape or transcript of any hearing(s) held under subsection 5.10;

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

5.14.b.5. The response to comments required by subsection 5.13, which identified and support any change made in the draft permit and any new material placed in the record under subsection 5.13;

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

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

5.14.b.8. The final permit.

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

5.14.d. Material readily available at the Department or published material that is generally available and that is included in the administrative record under subdivisions 5.14.a and 5.14.b need not be physically included with the rest of the record, as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

5.15. Public access to information.

5.15.a. Any record, report or information and any permit, permit application, and related documentation within the Secretary's possession shall be available to the public for inspection and copying; provided, that, upon a satisfactory showing to the Secretary that the records, reports, permit documentation or information, or any part thereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the Secretary shall consider, treat, and protect the records as confidential pursuant to W.Va. Code §§ 22-18-1, et seq. 22-5-1, et seq., and 29B-1-4.

5.15.b. It shall be the responsibility of the person claiming any information as confidential under the provision of subdivision 5.15.a to comply with the requirements of 45CSR31 and W. Va. Code § 29B-1-1, et seq.

5.16. The provisions of 40 C.F.R. § 270.12 are excepted from incorporation by reference.

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Availability of information provided under this rule is controlled by the provisions of W. Va. Code §§ 22-18-1, et seq. 22-5-1, et seq., and 29B-1-1, et seq.

§45-25-6. Exclusions and exemptions.

6.1. Wastes and materials excluded in 33CSR20 are excluded from the requirements of this rule.

6.2. Except for recyclable materials exempt pursuant to 33CSR20, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of section 4 of this rule.

6.3. Any pathological waste incinerator not subject to this rule under subsection 4.15 shall be subject to 45CSR6 or 45CSR18, as applicable.

§45-25-7. Application fee.

7.1. Any person who applies for a permit for the construction and/or operation of an air emitting hazardous waste treatment, storage or disposal facility shall submit as part of the permit application a money order or cashier's check payable to the Division of Air Quality for deposit into the Air Pollution Control Fund. The fee shall be determined by the schedule set forth below:

Activity	Fee
Hazardous Waste Management Facilities	\$5,000
Class 2, 3 Modifications or Renewals of Permits and 40 C.F.R. § 270.41 for Hazardous Waste Management Facilities	\$1,000
Class 1 Modifications	\$500

7.2. These application fees shall be in addition to any fee required by the Hazardous Waste Management System rule, 33CSR20.

§45-25-8. Inconsistency between rules.

8.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency shall be resolved by the determination of the Secretary, and the determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

TABLE 45-25

40 C.F.R. Part 260 - Hazardous Waste Management System: General			
Subpart	Subpart Title	Requirement(s)	Requirement Title
B	Definitions	260.11	Incorporation by reference
40 C.F.R. Part 261 - Identification and Listing of Hazardous Waste			
Subpart	Subpart Title	Requirement(s)	Requirement Title
A	General	261.4	Exclusions.
A	General	261.6	Requirements for recyclable materials
A	General	261.7	Residues of hazardous waste in empty containers
40 C.F.R. Part 262 - Standards Applicable to Generators of Hazardous Waste			
Subpart	Subpart Title	Requirement(s)	Requirement Title
C	Standards applicable to generators of hazardous waste	262.17	Conditions for exemption for a large quantity generator that accumulates hazardous waste
40 C.F.R. Part 264 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities			
Subpart	Subpart Title	Requirement(s)	Requirement Title
B	General Facility Standards	264.15	General inspection requirements
		264.16	Personnel training
		264.17	General requirements for ignitable, reactive, or incompatible wastes
E	Manifest System, Recordkeeping, and Reporting	264.73	Operating record
I	Use and Management of Containers	264.179	Air emission standards
J	Tank Systems	264.200	Air emission standards
K	Surface Impoundments	264.232	Air emission standards
O	Incinerators	All	All
X	Miscellaneous Units	All	All
AA	Air emission standards for process vents	All	All
BB	Air emission standards for equipment leaks	All	All
CC	Air emission standards for tanks, surface impoundments, and containers	All	All
40 C.F.R. Part 265 - Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities			
Subpart	Subpart Title	Requirement(s)	Requirement Title
B	General Facility Standards	265.15	General inspection requirements
		265.16	Personnel training
		265.17	General requirements for ignitable, reactive, or incompatible wastes
E	Manifest System, Recordkeeping, and Reporting	264.73	Operating record

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I	Use and Management of Containers	265.178	Air emission standards
J	Tank Systems	265.202	Air emission standards
K	Surface Impoundments	265.231	Air emission standards
O	Incinerators	All	All
P	Thermal Treatment	All	All
AA	Air emission standards for process vents	All	All
BB	Air emission standards for equipment leaks	All	All
CC	Air emission standards for tanks, surface impoundments, and containers	All	All
Appendix	Appendices to part 265	Appendix VI	Appendix VI to part 265 - compounds with Henry's Law constant less than 0.1 y/x

40 C.F.R. Part 266 - Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

Subpart	Subpart Title	Requirement(s)	Requirement Title
H	Hazardous waste burned in boilers and industrial furnaces	All	All
Appendix	Appendices to Part 266	Appendix I - XIII	All

40 C.F.R. Part 270 - The Hazardous Waste Permit Program and Standardized Permit

Subpart	Subpart Title	Requirement(s)	Requirement Title
B	Permit application	270.11	Signatories to permit applications and reports
		270.14(b)	Contents of part B: general information requirements
		270.19	Specific part B information requirements for incinerators
		270.22	Specific part B information requirements for boilers and industrial furnaces burning hazardous waste
		270.23	Specific part B information requirements for incinerators
		270.24	Specific part B information requirements for process vents
		270.25	Specific part B information requirements for equipment leaks
		270.27	Specific part B information requirements for air emission controls for tanks, surface impoundments and containers
C	Permit Conditions	270.30	Conditions applicable to all permits
		270.31	Requirements for recording and reporting of monitoring results
		270.32	Establishing permit conditions
		270.33	Schedules of compliance

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D	Changes to permit	270.41	Modification or revocation and reissuance of permits
		270.42	Permit modification at the request of the permittee
		270.43	Termination of permits
		Appendix	Appendix I to §270.42 - classification of permit modification
F	Special forms of permits	270.62	Hazardous waste incinerator permits
		270.66	Permits for boilers and industrial furnaces burning hazardous waste
G	Interim status	270.72	Changes during interim status
I	Integration with Maximum Achievable Control Technology (MACT) standards	270.235	Options for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events
40 C.F.R. Part 279 - Standards for the Management of Used Oil			
Subpart	Subpart Title	Requirement(s)	Requirement Title
C	Standards for used oil generators	279.23	On-site burning in space heaters
G	Standards for used oil burners who burn off-specification used oil for energy recovery	All	All

**TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY**

**SERIES 34
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

§45-34-1. General.

1.1. Scope. -- This rule establishes and adopts a program of national emission standards for hazardous air pollutants and other regulatory requirements promulgated by the United States Environmental Protection Agency pursuant to 40 C.F.R. Parts 61, 63 and section 112 of the federal Clean Air Act, as amended. This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in 40 C.F.R. § 61.01(a), or one or more of the substances listed as hazardous air pollutants in section 112(b) of the CAA. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

1.2. Authority. -- W.Va. Code § 22-5-4.

1.3. Filing Date. -- ~~April 24, 2019.~~

1.4. Effective Date. -- ~~June 1, 2019.~~

1.5. Sunset Provision. -- Does not apply.

1.6. Incorporation by Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 C.F.R. Parts 61, 63 and 65, to the extent referenced in 40 C.F.R. Parts 61 and 63, effective June 1, ~~2018~~ 2019.

§45-34-2. Definitions.

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

2.2. "Clean Air Act" ("CAA") means the federal Clean Air Act, found at 42 U.S.C. § 7401 et seq., as amended.

2.3. "Hazardous air pollutant" means any air pollutant listed pursuant to 40 C.F.R. § 61.01(a) or § 112(b) of the CAA.

2.4. "Secretary" means the Secretary of the Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§ 22-1-6 or 22-1-8.

2.5. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 C.F.R. Parts 61 and 63. Words and phrases not defined therein shall have the meaning given to them in federal Clean Air Act.

§45-34-3. Requirements.

3.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed,

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reconstructed, modified, or operated any source subject to the provisions of 40 C.F.R. Parts 61 and 63 which results or will result in a violation of this rule.

3.2. No person may construct or reconstruct any major source of hazardous air pollutants, unless the Secretary determines that the maximum achievable control technology emission limitation under 40 C.F.R. Part 63 and this rule for new sources will be met.

3.3. The Secretary shall determine and apply case-by-case maximum achievable control technology standards to existing sources categorized by the Administrator pursuant to § 112(c)(1) of the CAA for which the Administrator has not promulgated emission standards in accordance with §§ 112(d) and 112(e) of the CAA.

3.4. Prior to constructing, reconstructing or modifying any facility subject to this rule, the owner or operator shall obtain a permit in accordance with the applicable requirements of 45CSR13, 45CSR14, 45CSR19, 45CSR30 and this rule.

§45-34-4. Adoption of standards.

4.1. The Secretary hereby adopts and incorporates by reference the provisions of 40 C.F.R. Parts 61, 63 and 65, to the extent referenced in 40 C.F.R. Parts 61 and 63, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. Parts 61, 63 and 65, effective June 1, ~~2018~~ 2019, for the purposes of implementing a program for emission standards for hazardous air pollutants, except as follows:

4.1.a. 40 C.F.R. §§ 61.16 and 63.15 are amended to provide that information shall be available to the public in accordance with W.Va. Code §§ 22-5-1 et seq., 29B-1-1 et seq., and 45CSR31;

4.1.b. Subpart E of 40 C.F.R. Part 63 and any provision related to § 112(r) of the CAA, notwithstanding any requirements of 45CSR30 shall be excluded;

4.1.c. Subparts DDDDDD, LLLLLL, OOOOOO, PPPPPP, QQQQQQ, TTTTTT, WWWWWW, ZZZZZZ, HHHHHH, BBBBBB, CCCCCC, WWWWWW, XXXXXX, YYYYYY, ZZZZZZ, BBBBBB, CCCCCC, and DDDDDD of 40 C.F.R. Part 63 shall be excluded; and

4.1.d. Subparts B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of 40 C.F.R. Part 61 shall be excluded.

§45-34-5. Secretary.

5.1. Any and all references in 40 C.F.R. Parts 63 and 65 to the “Administrator” are amended to be the “Secretary” except as follows:

5.1.a. where the federal regulations specifically provide that the Administrator shall retain authority and not transfer authority to the Secretary;

5.1.b. where provisions occur which refer to:

5.1.b.1. alternate means of emission limitations;

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

- 5.1.b.5. alternate monitoring methods;
- 5.1.b.6. waivers/adjustments to recordkeeping and reporting;
- 5.1.b.7. emissions averaging; or
- 5.1.b.8. applicability determinations; or

5.1.c. where the context of the regulation clearly requires otherwise.

§45-34-6. Permits.

6.1. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall in any way be limited or inapplicable.

§45-34-7. Inconsistency between rules.

7.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

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TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 40
CONTROL OF OZONE SEASON NITROGEN OXIDES EMISSIONS

§45-40-1. General.

1.1. Scope. -- This rule establishes:

1.1.a. Ozone season NO_x emission limitation, monitoring, recordkeeping, reporting, excess emissions, and NO_x budget demonstration requirements for large industrial boilers and combustion turbines that have a maximum design heat input greater than 250 mmBTU/hr, in accordance with 40 CFR §51.121;

1.1.b. Ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements for affected stationary internal combustion engines; and

1.1.c. Ozone season NO_x control standards, ozone season NO_x compliance plan, reporting, monitoring and recordkeeping requirements for applicable cement manufacturing kilns.

1.2. Authority. -- W.Va. Code §22-5-4.

1.3. Filing Date. -- ~~June 16, 2016.~~

1.4. Effective Date. -- ~~July 1, 2016.~~

1.5. ~~Former Rules. -- This legislative rule amends 45CSR40 -- "Control of Ozone Season Nitrogen Oxide Emissions" which was filed April 14, 2008, and which became effective May 1, 2008. Sunset Provision. -- Exempt.~~

§45-40-2. Definitions.

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency (U.S. EPA) or the Administrator's duly authorized representative.

2.2. "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

2.3. "Clean Air Act" or "CAA" means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended

2.4. "Clinker" means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

2.5. "Combustion turbine" means:

2.5.a. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

2.5.b. If the enclosed device under subdivision 2.6.a is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

2.6. “Continuous emission monitoring system” or “CEMS” means, ~~except for purposes of subsections 2.15 and 6.2, the equipment required under 40 CFR part 75, subpart H to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides, stack gas volumetric flow rate, stack gas moisture content, and oxygen (O₂) or carbon dioxide (CO₂) concentration (as applicable), in a manner consistent with 40 CFR part 75 total equipment required for the determination of nitrogen oxides (NO_x) emission rate, expressed in pounds per million British thermal units (lb/mmBtu). For the purposes of this rule, CEMS is used for continuous compliance determinations. The sample interface, pollutant analyzer, diluent analyzer, and data recorder are the major subsystems of the CEMS. The following systems are system is the principal types type of continuous emission monitoring systems system:~~

~~2.6.a. A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);~~

~~2.6.b. A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x emissions, in parts per million (ppm);~~

~~2.6.c. A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂; and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);~~

~~2.6.d. A moisture monitoring system, as defined in 40 CFR §75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O;~~

~~2.6.e. A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and~~

~~2.6.f. An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂, in percent O₂.~~

2.7. “Excess emissions” means nitrogen oxides emitted by an applicable unit under subsection 4.1 during an ozone season that exceeds the ozone season NO_x emissions limitation for the unit set forth in section 5.

2.8. “Fossil fuel” means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

2.9. “Fossil fuel-fired” means, with regard to a unit, and solely for purposes of applying the applicability provisions in subsection 4.1:

2.9.a. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or

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2.9.b. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

2.10. "Large NO_x SIP call engine" means a stationary internal combustion engine identified and designated as "large" in the NO_x SIP Call Engine Inventory as emitting more than one ton of NO_x per average ozone season day in 1995.

2.11. "Long dry kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

2.12. "Long wet kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

2.13. "Low-NO_x burners" means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing and establish fuel-rich zones for initial combustion.

2.14. "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NO_x emissions through:

2.14.a. Burning part of the fuel at a lower temperature; and

2.14.b. Reducing conditions at the solid waste injection point that may destroy some of the NO_x formed upstream in the kiln burning zone.

2.15. "Monitoring system" means, for purposes of subsection 6.2, a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR part 75 as defined in 40 CFR §72.2.

2.16. "Nitrogen oxides" or "NO_x" means all oxides of nitrogen except nitrous oxide (N₂O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO₂)

~~2.16~~ 2.17. "NO_x SIP Call Engine Inventory" means the inventory of internal combustion engines compiled by U.S. EPA as part of the NO_x SIP Call Rule, including the technical amendments, announced in the March 2, 2000 ~~FR~~ Federal Register, page 11222, and the adjustment of the 2007 Budget NO_x Control Efficiency to 82 percent for large gas-fired engines, announced in the April 21, 2004 Federal Register notice, page 21604 for the Phase II NO_x SIP Call Rule.

~~2.17~~ 2.18. "Ozone season" means the period beginning May 1 of a calendar year, and ending on September 30 of the same year, inclusive.

2.19. "Performance Specification 2" or "PS 2" means the Specifications and Test Procedures for SO₂ and NO_x Continuous Emission Monitoring Systems in Stationary Sources provided in Appendix B to 40 CFR part 60. For purposes of subsections 6.3 and 6.5, these procedures are used for measuring CEMS relative accuracy and calibration drift and include CEMS installation and measurement location specifications, equipment specifications, performance specifications, and data reduction.

2.20. "Performance Specification 16" or "PS 16" means the Specifications and Test Procedures for Predictive Emission Monitoring Systems (PEMS) in Stationary Sources provided in Appendix B to 40 CFR part 60. For purposes of subsection 6.4, these procedures are used to determine whether the PEMS is acceptable for use in demonstrating compliance with the NO_x emission limit and to certify the PEMS initially. They are also used periodically thereafter to ensure the PEMS is operating properly. These

specifications apply to PEMS that are installed on or after April 24, 2009.

2.21. “Predictive Emission Monitoring System” or “PEMS” means all of the equipment required to predict an emission concentration or emission rate. The system may consist of any of the following major subsystems: sensors and sensor interfaces, emission model, algorithm, or equation that uses process data to generate an output that is proportional to the emission concentration or emission rate, diluent emission model, data recorder, and sensor evaluation system. Systems that use fewer than three (3) variables do not qualify as PEMS unless the system has been specifically approved by the Administrator for use as a PEMS. A PEMS may predict emissions data that are corrected for diluent if the relative accuracy and relevant QA tests are passed in the emission units corrected for diluent. Parametric monitoring systems that serve as indicators of compliance and have parametric limits but do not predict emissions to comply with an emissions limit are not included in this definition.

~~2.18~~ 2.22. “Portland cement” means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

~~2.19~~ 2.23. “Portland cement kiln” means a system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker

~~2.20~~ 2.24. “Precalciner kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

~~2.21~~ 2.25. “Preheater kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

~~2.22~~ 2.26. “Secretary” means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

~~2.23~~ 2.27. “Source” means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons.

~~2.24~~ 2.28. “Stationary internal combustion engine” or “engine” means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for more than 12 consecutive months. Any engine (or engines) that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.

~~2.25~~ 2.29. “Ton” means 2,000 pounds.

~~2.26~~ 2.30. “Unit” means a stationary fossil fuel-fired boiler, combustion turbine, or combined cycle system.

~~2.27~~ 2.31. Other words and phrases used in this rule, unless otherwise indicated, will have the meaning ascribed to them in W.Va. Code §22-5-1 et seq. and 40 CFR §72.2.

§45-40-3. Measurements, abbreviations and acronyms.

3.1. Measurements, abbreviations and acronyms used in this rule are defined as follows:

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3.1.a. Btu -- British thermal unit.

3.1.b. CEMS -- Continuous Emissions Monitoring System

3.1.c. CO₂ -- carbon dioxide.

3.1.d. CSAPR -- Cross-State Air Pollution Rule

~~NO_x -- nitrogen oxides.~~

3.1.e. Hr -- hour.

3.1.f. MmBtu -- million Btu.

3.1.g. NO_x -- nitrogen oxides.

3.1.h. O₂ -- oxygen

3.1.i. PEMS -- Predictive Emission Monitoring System

3.1.j. Tph -- tons per hour.

3.1.k. Yr -- year.

§45-40-4. Applicability.

4.1. The owner or operator of a unit that has a maximum design heat input greater than 250 mmBtu/hr, except for any unit subject to the federal Cross-State Air Pollution Rule (CSAPR) NO_x Ozone Season Group 2 Trading Program established under 40 CFR part 97, ~~Subpart BBBBBB~~ subpart EEEEE, or an equivalent trading program established under regulations 45CSR43 and approved as a state implementation plan revision pursuant to 40 CFR ~~§52.38(b)(5)~~ §52.38(b)(9), shall comply with the ozone season NO_x emission limitation, and monitoring, recordkeeping and reporting requirements for ozone season emissions of NO_x-set forth in sections 5 and 6 below.

4.2. Effective May 1, 2009, the owner or operator of a large NO_x SIP Call engine shall comply with the ozone season NO_x-reduction, compliance plan, monitoring, recordkeeping and reporting requirements set forth in section 9 below.

4.3. Effective May 1, 2009, the owner or operator of a kiln that meets the following applicability requirements shall comply with the ozone season NO_x control standards, ozone season NO_x compliance plan, reporting, monitoring and recordkeeping requirements set forth in section 10 below:

4.3.a. Long dry kilns ≥ 12 TPH process rate;

4.3.b. Long wet kilns ≥ 10 TPH process rate;

4.3.c. Preheater kilns ≥ 16 TPH process rate; and

4.3.d. Precalciner and preheater/precalciner kilns ≥ 22 TPH process rate.

§45-40-5. Ozone season NO_x emission limitation.

5.1. Ozone season NO_x limitation. -- Beginning May 1, 2016, the owner or operator of a unit that meets the applicability requirements set forth in subsection 4.1 shall limit emissions of NO_x during an

ozone season pursuant to a NO_x emission rate for each unit contained in a permit issued under 45CSR13, 45CSR14, 45CSR19 or via consent order issued by the Secretary in accordance with W.Va. Code §22-5-4(a)(5). Such ozone season NO_x limitation may also include a limitation on operating time for a unit during the ozone season.

§45-40-6. Monitoring, recordkeeping and reporting requirements.

~~6.1. The owner or operator of an applicable unit under subsection 4.1 shall operate certified continuous emission monitor systems necessary to attribute ozone season NO_x mass emissions to each unit, in accordance with 40 CFR part 75, subpart H. NO_x mass emissions measurements recorded and reported in accordance with 40 CFR Part 75, Subpart H shall be used to determine a unit's compliance with the ozone season NO_x emission limitation set forth in section 5.~~

6.1. The owner or operator of an applicable unit under subsection 4.1 shall comply with the provisions of 40 CFR part 75, subpart H (including use of any of the emissions monitoring methodologies which the unit qualifies to use under 40 CFR part 75) or shall install and operate a certified continuous emission monitoring system (CEMS) or a certified predictive emission monitoring system (PEMS) as necessary to attribute ozone season mass emissions of NO_x to each unit in accordance with subsection 6.2, 6.3, 6.4 or 6.5 below. Nitrogen oxides mass emissions measurements recorded and reported in accordance with subsection 6.2, 6.3, 6.4 or 6.5 shall be used to determine a unit's compliance with the ozone season NO_x emission limitation set forth in section 5.

6.2. An owner or operator that elects to demonstrate compliance in accordance with 40 CFR part 75, subpart H, shall meet the following requirements:

6.2.a. Install, calibrate, certify, maintain, monitor, and operate all required monitoring systems in accordance with 40 CFR part 75, subpart H:

6.2.b.. Maintain records in accordance with 40 CFR part 75, subpart H ; and

6.2.c. Submit reports in accordance with 40 CFR part 75, subpart H.

6.3. An owner or operator that elects to demonstrate compliance using a CEMS in accordance with 40 CFR part 60, subpart Db and 45CSR16 shall meet the following requirements:

6.3.a. Install and certify the CEMS in accordance with Performance Specification 2 in Appendix B to 40 CFR part 60:

6.3.b. Operate and maintain the CEMS in accordance with 40 CFR §60.46b on a continuous basis;

6.3.c. Install, calibrate, maintain and operate the CEMS in accordance with the continuous monitoring requirements of:

6.3.c.1. 40 CFR §§60.48b and 60.13; or

6.3.c.2. 40 CFR §§60.47b(e) and 60.13;

6.3.d. For each month of the ozone season:

6.3.d.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.3.d.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total

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monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.3.b and 6.3.c for the last day of the month on which the unit operated and divide by 2000;

6.3.e. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.3.d for each month of the ozone season; and

6.3.f. Comply with the following reporting and recordkeeping requirements:

6.3.f.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.3.d and 6.3.e; and

6.3.f.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.3.d and 6.3.e.

6.4. An owner or operator not otherwise required to use a CEMS to demonstrate compliance with 40 CFR 60 may elect to demonstrate compliance using a PEMS and shall meet the following requirements:

6.4.a. Install and certify the PEMS in accordance with Performance Specification 16 in Appendix B to 40 CFR part 60 and the Quality Assurance Procedures for compliance PEMS in Appendix F to 40 CFR part 60;

6.4.b. Submit to the Secretary for approval a plan that identifies the operating conditions to be monitored and the records to be maintained in accordance with 40 CFR §60.49b(c). The request for plan approval shall be contained in the permit application or consent order required under subsection 6.6;

6.4.c. Operate and maintain the compliance PEMS on a continuous basis in accordance with 40 CFR §60.46b and the compliance PEMS requirements provided in Performance Specification 16 in Appendix B to 40 CFR part 60;

6.4.d. Comply with the continuous monitoring requirements of 40 CFR §§60.48b and 60.13;

6.4.e. For each month of the ozone season:

6.4.e.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.4.e.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.4.c and 6.4.d for the last day of the month on which the unit operated and divide by 2000;

6.4.f. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.4.e for each month of the ozone season; and

6.4.g. Comply with the following reporting and recordkeeping requirements:

6.4.g.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.4.e and 6.4.f; and

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6.4.g.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.4.e and 6.4.f.

6.5. An owner or operator of a combustion turbine unit that elects to demonstrate compliance using a CEMS shall meet the following requirements:

6.5.a. Install and certify the CEMS in accordance with Performance Specification 2 in Appendix B to 40 CFR part 60 and 45CSR16;

6.5.b. Conduct the performance tests in accordance with 40 CFR §60.4400;

6.5.c. Operate and maintain the CEMS in accordance with 40 CFR §60.4345 on a continuous basis;

6.5.d. Collect all CEMS data in accordance with 40 CFR §60.4350;

6.5.e. For each month of the ozone season:

6.5.e.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.5.e.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.5.c and 6.5.d for the last day of the month on which the unit operated and divide by 2000;

6.5.f. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.5.e for each month of the ozone season; and

6.5.g. Comply with the following reporting and recordkeeping requirements:

6.5.g.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.5.e and 6.5.f; and

6.4.g.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.5.e and 6.5.f.

6.6. An owner or operator that elects an alternative monitoring scenario that is not currently contained in a permit issued pursuant to 45CSR13, 45CSR14 or 45CSR19 or via a consent order shall:

6.6.a. Submit a request for the alternative monitoring scenario in a permit application in accordance with 45CSR13, 45CSR14 or 45CSR19. For compliance options provided in 6.3, 6.4 or 6.5, the permit application should identify how NO_x emissions (in tons) will be determined using the CEMS or PEMS data; and.

6.6.b. Obtain approval from the Secretary via a permit issued under 45CSR13, 45CSR14 or 45CSR19 or via a consent order, effective prior to the start of the ozone season.

6.7. An owner or operator electing to demonstrate compliance with 40 CFR part 75, subpart H shall not use any alternative monitoring system, alternative reference method, or any other alternative for the

requirements under 40 CFR part 75, subpart H prior to obtaining written approval by the Administrator in accordance with 40 CFR §75.70(h).

6.8. An owner or operator required to demonstrate compliance with a NO_x emissions limit under 40 CFR part 60, subpart Db shall not use an alternative monitoring system, reference method, or other CEMS requirements alternative under 40 CFR part 60, subpart Db prior to obtaining written approval by the Administrator.

6.9. The owner or operator of an applicable unit under subsection 4.1 may demonstrate compliance with the NO_x ozone season emission limitation set forth in section 5 in accordance with an alternative monitoring system under 40 CFR part 60, subpart Db without obtaining approval of the Secretary, provided the owner or operator obtained written approval from the Administrator prior to the effective date of this rule.

§45-40-7. Violation.

7.1. The owner or operator of an applicable unit under subsection 4.1 shall be subject to enforcement pursuant to W.Va. Code §22-5-1 et seq. or the CAA for excess emissions of NO_x during an ozone season if the unit emitted nitrogen oxides in excess of its ozone season NO_x emission limitation set forth in section 5.

§45-40-8. Ozone season NO_x budget demonstration.

8.1. Ozone season NO_x budget. -- The ozone season NO_x budget for all units that meet the applicability requirements set forth in subsection 4.1 is 2,184 tons.

8.2. Ozone season NO_x budget demonstration. -- Through the imposition of ozone season NO_x limitations under section 5, and assumption of maximum operating capacity or use of a limitation on operating time for a unit during the ozone season, the Secretary shall demonstrate to the Administrator that the ozone season NO_x-emissions from all applicable units under subsection 4.1 meets the ozone season NO_x budget for these units set forth in subsection 8.1.

8.3. New units. -- The Secretary shall revise the ozone season NO_x budget demonstration under subsection 8.2 to accommodate the ozone season NO_x emissions of any new unit that meets the applicability requirements set forth in subsection 4.1. The ozone season NO_x emissions from any such new unit shall not cause the ozone season NO_x-budget set forth in subsection 8.1 to be exceeded.

§45-40-9. Ozone season NO_x reduction requirements for stationary internal combustion engines.

9.1. Ozone season NO_x reduction. -- Effective May 1, 2009, the following owners or operators must reduce ozone season NO_x emissions by an amount equal to or greater than the applicable ozone season NO_x-reduction listed in the table below. The applicable ozone season NO_x reduction is binding on the listed owners or operators, their successors and assigns:

Company	Ozone Season NO_x Reduction
Dominion	668 tons
Columbia Gas Transmission	235 tons
Total	903 tons

9.2. Compliance plan. -- Effective May 1, 2009, an owner or operator of a large stationary internal combustion engine under subsection 4.2 must not operate such engine in the period May 1 through September 30 of 2009 and any subsequent year unless the owner or operator demonstrates the applicable

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ozone season NO_x reduction under subsection 9.1 through the requirements of an approved compliance plan. The compliance plan ~~must~~ shall meet the following provisions:

9.2.a. Reserved;

9.2.b. Reserved;

9.2.c. The compliance plan must demonstrate quantifiable and enforceable NO_x emission reductions equal to or greater than the applicable ozone season NO_x reduction set forth in subsection 9.1, taking into account any creditable reduction in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i;

9.2.d. The compliance plan may include and affect some or all stationary internal combustion engines or other significant NO_x emitting equipment at an individual facility, at several facilities, or at all facilities in West Virginia that are controlled by the same owner or operator;

9.2.e. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on large stationary internal combustion engines under subsection 9.1. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

9.2.f. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on uncontrolled stationary internal combustion engines not under subsection 4.2. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call engine inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

9.2.g. The compliance plan may include credit for reductions in NO_x emissions due to replacement of any stationary internal combustion engines or other significant NO_x-emitting equipment. The owner or operator will demonstrate to the satisfaction of the Secretary that the historic ozone season load capacity of any stationary internal combustion engine or other significant NO_x-emitting equipment no longer in operation has been or would be replaced by one or more new stationary internal combustion engines, electric motors or turbines during each ozone season. The credit for reductions in NO_x emissions must be quantified based on the replaced engine's or other significant NO_x-emitting equipment's ozone season NO_x emission rate and ozone season operating hours, and the projected emission rate and ozone season operating hours of any new replacement stationary internal combustion engines, electric motors or turbines;

9.2.h. The compliance plan may include credit for reductions in NO_x emissions due to reductions from shifting historic load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The owner or operator will demonstrate to the satisfaction of the Secretary that a quantifiable net reduction in NO_x emissions has occurred or will occur due to a direct shift of ozone season load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The credit for reductions in NO_x emissions must be quantified based on the uncontrolled engine's historic ozone season load capacity, NO_x emission rate (in g/bhp-hr), ozone season operating hours (in hr/ozone season), and the shifted ozone season load capacity, NO_x emission rate (in g/bhp-hr) and ozone season operating hours (in hr/ozone season) of the controlled stationary internal combustion engine, electric motor or turbine;

9.2.i. The compliance plan may include credit for reductions in NO_x emissions due to the

installation and operation of NO_x controls on significant NO_x emitting equipment other than stationary internal combustion engines. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from such NO_x emitting equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between NO_x emission rates prior to installation of controls and controlled NO_x emission rates, and ozone season operating hours;

9.2.j. The compliance plan must include the following:

9.2.j.1. A list of affected engines or affected NO_x emitting equipment subject to the plan, including the manufacturer, model number, facility location and facility identification number;

9.2.j.2. The projected ozone season hours of operation for each affected engine or affected NO_x emitting equipment and supporting documentation;

9.2.j.3. A description of the NO_x emission controls installed, or to be installed, on each affected engine or affected NO_x emitting equipment, date or proposed date of installation, and documentation to support the controlled NO_x emission rates;

9.2.j.4. The uncontrolled and controlled NO_x emission rates in lb/hr and tons per ozone season for each affected engine or affected NO_x emitting equipment, as applicable;

9.2.j.5. A numerical demonstration that the sum of creditable NO_x emission reductions (in tons) obtained from all affected engines or affected NO_x emitting equipment included under a compliance plan will be equivalent to or greater than the owner or operator's applicable ozone season NO_x reduction under subsection 9.1, taking into account any creditable reductions in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i; and

9.2.j.6. Performance test protocol and provisions for periodic monitoring, reporting and recordkeeping for each affected engine or affected NO_x emitting equipment.

9.2.k. Any creditable reductions in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i must be quantifiable and enforceable through limitations included in a federally enforceable permit or compliance order; and

9.2.l. Any owner or operator with an approved compliance plan under subsection 9.2 may amend the plan with the written approval of the Secretary. Any NO_x emission rate or limitation included in such an amendment must be reflected in a federally enforceable permit or compliance order. The Secretary will either approve by order or disapprove by certified mail the amended compliance plan within 90 days of submission, and notify the Administrator of the compliance plan amendment approval upon issuance of order.

9.3. Monitoring requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must comply with the following monitoring requirements for each affected engine or affected NO_x emitting equipment:

9.3.a. The owner or operator must complete an initial performance test consistent with the requirements of 40 CFR part 60, Appendix A and 45CSR16, following installation of NO_x emission controls required to achieve the NO_x emission rate limit specified in subdivision 9.2.k; and

9.3.b. For the ozone season beginning in 2009, and each ozone season thereafter, the owner or operator will perform periodic monitoring sufficient to yield reliable data which demonstrate compliance with the limitations specified in subdivision 9.2.k. Such periodic monitoring must include:

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9.3.b.1. A continuous emission monitoring system that complies with 40 CFR part 75 or 40 CFR part 60 and 45CSR16 and the quality assurance procedures specified in 40 CFR part 60, Appendix F and 45CSR16; or

9.3.b.2. Performance tests consistent with the requirements of 40 CFR part 60, Appendix A and 45CSR16, or portable monitors using ASTM D6522-00; and

9.3.b.2.A. A parametric monitoring program that specifies operating parameters, and their ranges, that will provide reasonable assurance that each affected engine or affected NO_x emitting equipment's emissions are consistent with the requirements of a compliance plan under subsection 9.2. Any such parametric monitoring program must be approved by the Secretary; or

9.3.b.2.B. A predictive emissions measurement system that relies on automated data collection from instruments. Any such predictive emissions measurement system must be approved by the Secretary.

9.4. Recordkeeping requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must comply with the following recordkeeping requirements:

9.4.a. Maintain all records necessary to demonstrate compliance with the requirements of the compliance plan and subsection 9.4 for a period of five calendar years at the facility where an affected engine or affected NO_x emitting equipment is located. Such records will be made available to the Secretary or Administrator upon request; and

9.4.b. For each affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2, the owner or operator will maintain records of:

9.4.b.1. Identification and location of each affected engine or affected NO_x emitting equipment;

9.4.b.2. Calendar date of record;

9.4.b.3. The number of hours the affected engine or affected NO_x emitting equipment is operated during each ozone season compared to projected operating hours;

9.4.b.4. Type and quantity of fuel combusted; and

9.4.b.5. The results of all compliance tests.

9.5. Reporting requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must:

9.5.a. Notify the Secretary of any performance test under paragraph 9.3.b.2 at least 15 days in advance of such test;

9.5.b. Submit results of all performance tests to the Secretary within 30 days of completion of such tests; and

9.5.c. Submit a report which documents the total ozone season NO_x emissions and certifies compliance with the compliance plan for each affected engine or affected NO_x emitting equipment to the Secretary by October 31 of each year, beginning in 2009. The report must demonstrate and certify compliance with the applicable ozone season NO_x reduction set forth in subsection 9.1.

§45-40-10. Ozone season NO_x reduction requirements for emissions of NO_x from cement manufacturing kilns.

10.1. Standard requirements. -- Effective May 1, 2009, an owner or operator of any Portland cement kiln subject to this section must not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 to September 30 with low-NO_x burners, mid-kiln firing or alternative control techniques, subject to approval by the Administrator, that achieve at least the same emissions decreases as low-NO_x burners or mid-kiln firing.

10.2. NO_x compliance plan. -- Any owner or operator of a source subject to the standard requirements of subsection 10.1 may elect to use NO_x reductions from any non-affected kiln at a source with a Portland cement kiln under subsection 4.3. If the owner or operator so elects, he or she must submit for approval to the Administrator by May 1, 2009 a NO_x compliance plan which demonstrates the method(s) by which the operator will achieve NO_x reductions from non-affected kilns which achieve at least the same emissions decreases set forth in the standard requirements of subsection 10.1.

10.3. Reporting requirements. -- Any owner or operator subject to the standard requirements of subsection 10.1 must comply with the following reporting requirements:

10.3.a. By May 1, 2009, submit to the Secretary and Administrator the identification number and type of each kiln subject to this section, the name and address of the plant where the kiln is located and the name and telephone number of the person responsible for demonstrating compliance with this section; and

10.3.b. Submit a report documenting for that kiln the total NO_x emissions from May 1 through September 30 of each year to the Secretary and Administrator by October 31 of each year, beginning in 2009.

10.4. Monitoring requirements.

10.4.a. Any owner or operator of a kiln subject to this section must complete an initial performance test and subsequent annual testing consistent with the requirements of 40 CFR part 60, Appendix A, Method 7, 7A, 7C, 7D or 7E; and 45CSR16; and

10.4.b. The operator may use the results of continuous emission monitoring system (CEMS) to replace the annual testing requirements set forth in subdivision 10.4.a. Such equipment must be installed and operated consistent with 40 CFR part 75.

10.5. Recordkeeping requirements. -- Any owner or operator of a kiln subject to this section must produce and maintain records which include, but are not limited to:

10.5.a. The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln;

10.5.b. The type of control used for each affected Portland cement kiln;

10.5.c. The date, time and duration of any startup, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment;

10.5.d. The results of any performance testing;

10.5.e. Daily cement kiln production records; and

10.5.f. All records required to be produced or maintained will be retained on site for a minimum

of 5 years and be made available to the Secretary or Administrator upon request.

§45-40-11. Inconsistency between rules.

11.1. In the event of any inconsistency between this rule and any other rule of the ~~West Virginia Department of Environmental Protection~~ Division of Air Quality, the inconsistency will be resolved by the determination of the Secretary and the determination will be based upon the application of the more stringent provision, term, condition, method or rule.

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