US EPA ARCHIVE DOCUMENT

SECTION X
APPENDICES

D. DEP'S LEGISLATIVE RULE: HAZARDOUS WASTE MANAGEMENT SYSTEM (33 C.S.R. 20)

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. -- May 1, 2012.

1.4. Effective Date. -- June 1, 2012.

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 June 1, 2011 unless otherwise noted in the text of this rule. This incorporation by reference is not intended to replace or abrogate federal authorities granted the Resource Conservation and Recovery Act of 1976.

1.5.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 of 1976 §3010, as amended (42 U.S.C. §6930), the reference is to section 4. The notification requirements of the Resource Conservation and Recovery Act of 1976 §§3010 remain in effect and will be satisfied by compliance with section 4.

1.6. Cross Reference. -- Whenever a reference is cited in a provision incorporated by reference which cross reference was not incorporated by reference, the provisions of the applicable state law and rules, if any, control to the extent of any conflict or inconsistency. Where state rules are present and there is a question, the state rules govern. Where there are no state rules present, federal regulations govern. For example, cross reference to 40 C.F.R. part 264 subpart O -- Incinerators, which was not incorporated by reference, would need to be referenced to the applicable West Virginia Department of Environmental

Protection, Division of Air Quality rule, 45CSR25, "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities."

1.7. Inconsistencies with the W. Va. Code. -- In the event a provision of the Code of Federal Regulations incorporated by reference herein includes a section that is inconsistent with the W. Va. Code, the W. Va. Code controls to the extent federal law does not preempt the state law. In the event a provision of the Code of Federal Regulations incorporated by reference herein is beyond the scope of authority granted to the Department of Environmental Protection pursuant to statute or is in excess of the statutory authority, the provision will be and remain effective only to the extent authorized by the W. Va. Code.

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

1.9. 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.

1.10. 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.

§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 one thousand (1,000) kilograms of non-acutely hazardous waste in a calendar month and/or who treat, store or dispose of hazardous waste at their facility.

2.1.a.2. "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 (3) days. Placement of recyclable materials for longer than three (3) days is considered "storage."

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.

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

2.3. 40 C.F.R. §260.21(d). B. -- The provisions of 40 C.F.R. §260.21(d) are excepted from incorporation by reference.

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 Department of Environmental Protection 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 of Environmental Protection shall send the petitioner an itemized list of estimated costs it expects to incur as a result of reviewing and investigating the petition. 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 of Environmental Protection, 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 of Environmental Protection'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. Where a decision to deny a petition is made, the Secretary shall notify the petitioner of the action in writing, setting forth the reasons therefore.

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). A time schedule for the installation of groundwater monitoring shall be included. This requirement does not apply to wastewater treatment units or containers.

3.1.a.2. Before claiming an exemption, the owner or operator of each wastewater treatment facility receiving mixtures of wastes under 40 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. §261.5 (f)(3)(iv) and (v) and 40 C.F.R. §261.5(g)(3)(iv) and (v) are excepted from incorporation by reference. Conditionally exempt 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".

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

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

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

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

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

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

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

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

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

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

4.2.f. New generators and those initiating activities subsequent to the EPA notification period referenced in subsection 4.1.a shall comply with the EPA identification number requirements and shall provide a copy of their application for an EPA identification number to the Administrator.

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

5.1. 40 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). -- The provisions of 40 C.F.R. §262.10(g) 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 of 1976 §3008.

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. 40 C.F.R. §262.10(j). -- The provisions of 40 C.F.R. §262.10(j) (1) and (2) including Table 1 will be excepted from incorporation.

5.4. 40 C.F.R. Part 262, Subpart E. -- The provisions of 40 C.F.R. part 262, subpart E -- Exports of Hazardous Waste 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 E 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 E.

5.5. 40 C.F.R. Part 262, Subpart H. -- The provisions of 40 C.F.R. part 262, subpart H -- Transboundary Shipments of Hazardous Waste for Recovery within the OECD 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.

5.6. 40 C.F.R. Part 262, Subpart I. -- The provisions of 40 C.F.R. part 262, subpart I -- New York State Public Utilities will be excepted from incorporation.

5.7. 40 C.F.R. Part 262, Subpart J. -- The provisions of 40 C.F.R. part 262, subpart J -- University Laboratories XL Project -- Laboratory Environmental Management Standard will be excepted from incorporation.

§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, Roads, and Highways", 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 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 Unit. -- The provisions of 40 C.F.R. part 264, subpart F -- Releases from solid waste management 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 Secretary retains authority to enforce 40 C.F.R. §§264.347(b)(c)(d).

7.6.a. 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 emissions from process vents, equipment leaks, 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.

8.3. 40 C.F.R. §§265.341, 265.345, 265.347 (a), 265.352. -- The provisions of 40 C.F.R. §§265.341, 265.345, 265.347(a) 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 air monitoring items listed in 40 C.F.R. §265.347(a) related to incinerating hazardous waste. The Secretary retains authority to enforce 40 C.F.R. §§265.347(b)(c)(d).

8.4. 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.

8.5. 40 C.F.R. Part 265 Subparts AA, BB, CC and 40 C.F.R. §265.1080(f); and 40 C.F.R. §265.1080(g). -- The provisions of 40 C.F.R. §265.1080(f); and 40 C.F.R. §265.1080(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, 268.10 - 13, 268.42(b) and 268.44. -- The provisions of 40 C.F.R. §§268.5, 268.6, 268.10, 268.11, 268.12, 268.13, 268.42(b) and 268.44 are excepted from incorporation by reference.

10.3. 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. part 267 and 40 C.F.R. 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."

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" of the state treasury. 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 (3) 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 permitting agency 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 thirty (30) days prior to the meeting. The applicant shall maintain, and provide to the permitting agency 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 permitting agency, and the Secretary shall forward copies to the appropriate units of State and local government having jurisdiction over the area where the facility is or is proposed to be located; and to each State agency having any authority under State law with respect to the construction or operation of the facility.

11.4.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 a Part B permit application has been submitted. The Secretary shall provide public notice 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, that a Part B permit application has been submitted to the Secretary and is available for review.

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 notice will be published within a reasonable period of time after the application is received by the Secretary. 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 permitting agency'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 permitting agency'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 shall have 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 shall be 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 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. Each application submitted by a new hazardous waste management facility shall be reviewed for completeness by the Secretary within thirty (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 sixty (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 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 permit shall be denied and appropriate enforcement actions will be taken 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 a date will be scheduled.

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;

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.

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 Director 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/or 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. A fact sheet shall be prepared 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 forty-five (45) days for public comment. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit, and the two notices may be combined.)

11.11.d. Public notice of activities described in subdivision 11.11.a shall be given 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. Any other agency that the Secretary knows has issued or is required to issue a RCRA, UIC, PSD or other permit under the Clean Air Act or W. Va. Code §22-5-1 et. seq.; NPDES, 33 U.S.C. §1344; or 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 shall update the mailing lists from time to time by requesting written indications of continued interest from those listed. The Secretary shall 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. Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;

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

11.11.d.4. 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 will contain the following minimum information:

11.11.e.1. Name and address of the office processing the permit 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; and

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, the times that the record will be open for public inspection; and

11.11.e.7. Any additional information considered 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 will 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, all persons identified in subparagraphs 11.11.d.1.A, 11.11.d.1.B, and 11.11.d.1.C shall be mailed 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. All comments shall be considered in making the final decision and shall be answered as provided in subsection 11.16 below.

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 forty-five (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. Public notice of the hearing will be given 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. Reasonable limits shall be set upon the time allowed for oral statements, and the submission of statements in writing will be required. 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. Public notice of any of the above actions will be issued 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, or revoke and reissue, or terminate a permit.

11.15.b. A final permit decision will become effective thirty (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 issuing agency office 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, however, 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 shall be 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. Any document submitted to the Secretary that contains information for which claim of confidentiality is made must be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Secretary. The document shall be submitted in two (2) 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. All information that meets the tests of subdivision 11.18.d shall be marked with the term "ACCEPTED" and shall be protected 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 effecting 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. Availability of information provided under this rule is controlled by the provision of W. Va. Code, §22-18-12 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. Consult the rules of the Division of Air Quality regarding emissions from process vents.

11.21. 40 C.F.R. §§270.60(b) and 270.64. The provisions of 40 C.F.R. §§270.60(b) and 270.64 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, 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). -- 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. §262.34 are exempt from regulation under section 11 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:

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-1-1 et seq.

TABLE 1
PERMIT APPLICATION FEE SCHEDULE

STORAGE

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

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