

and pests, Reporting and recordkeeping requirements.

Dated: April 28, 2000

James Jones,

Director, Registration Division, Office of
Pesticide Programs.

Therefore, 40 CFR chapter I is
amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180
continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and
371.

2. Section 180.443 is amended by
revising the introductory text of
paragraph (a), by adding alphabetically
new entries to the table in paragraph (a),
and by revising paragraph (d) the read
as follows:

§ 180.443 Myclobutanil; tolerances for residues.

(a) *General.* Tolerances are
established for combined residues of the
fungicide myclobutanil alpha-butyl-
alpha-(4-chlorophenyl)-1*H*-1,2,4-
triazole-1-propanenitrile and its alcohol
metabolite (alpha-(3-hydroxybutyl)-
alpha-(4-chlorophenyl)-1*H*-1,2,4-
triazole-1-propanenitrile (free and
bound), in or on the following food
commodities:

| Commodity | Parts per million |
|----------------------------------|----------------------|
| * * * * | * |
| Apple, wet pomace | 1.3 |
| * * * * | * |
| Asparagus | 0.02 |
| * * * * | * |
| Bean, snap, succulent | 1.0 |
| Caneberry subgroup | 2.0 |
| * * * * | * |
| Currant | 3.0 |
| * * * * | * |
| Gooseberry | 2.0 |
| * * * * | * |
| Mayhaw | 0.70 |
| * * * * | * |
| Peppermint, tops | 3.0 |
| * * * * | * |
| Spearmint, tops | 3.0 |
| Strawberry | 0.50 |
| * * * * | * |
| Tomato | 0.30 |
| Tomato, puree | 0.50 |
| Tomato, paste | 1.0 |
| Vegetable, cucurbit, group | 0.20 |

* * * *

(d) *Indirect or inadvertent residues.*
Tolerances are established for residues
of the fungicide myclobutanil alpha-
butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-
triazole-1-propanenitrile in or on the
following food commodities:

| Commodity | Parts per million |
|---|----------------------|
| Animal Feed, Nongrass, Group | 0.03 |
| Grains, Cereal, Forage, Fod- der, and Straw, Group | 0.03 |
| Grains, Cereal, Group | 0.03 |
| Vegetable, Brassica, Leafy, Group | 0.03 |
| Vegetable, Foliage of Legume, Group | 0.03 |
| Vegetable, Fruiting, Group | 0.03 |
| Vegetable, Leafy, Except Bras- sica, Group | 0.03 |
| Vegetable, Leaves of Root and Tuber, Group | 0.03 |
| Vegetable, Legume, Group | 0.03 |
| Vegetable, Root and Tuber, Group | 0.03 |

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-6600-4]

West Virginia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: West Virginia has applied to
EPA for Final authorization of the
revision to its hazardous waste program
under the Resource Conservation and
Recovery Act (RCRA). The revision
covers statutory and regulatory changes
to the State's authorized hazardous
waste program, including the adoption
of the Federal hazardous regulations, as
amended through June 30, 1997, and the
Federal final rules published in the
Federal Register on December 8, 1997,
May 26, 1998, June 8, 1998, and on June
19, 1998 with certain exceptions
described in section H in the
Supplementary Information section of
this document. EPA has determined that
its hazardous waste program revisions
satisfy all of the requirements necessary
to qualify for Final authorization, and is
authorizing the state program revision
through this immediate final action.
EPA is publishing this rule without
prior proposal because the Agency
views this as a noncontroversial action
and does not anticipate adverse

comments. However, in the proposed
rules section of this **Federal Register**,
EPA is publishing a separate document
that will serve as a proposal to authorize
the revision should the Agency receive
adverse comment. If EPA receives
comments that oppose this action or
portion(s) thereof, we will publish a
document in the **Federal Register**
withdrawing this rule or portion(s)
thereof before it takes effect and a
separate document in the proposed
rules section of this **Federal Register**
will serve as a proposal to authorize the
changes. Unless EPA receives adverse
written comments during the review
and comment period, the decision to
authorize West Virginia's hazardous
waste program revision will take effect
as provided below.

DATES: This Final authorization for West
Virginia will become effective without
further notice on July 10, 2000, unless
EPA receives adverse comments by June
9, 2000. Once again if EPA should
receive such comments on its decision,
the Agency will publish a timely
withdrawal informing the public that
this rule will not take effect.

ADDRESSES: Send written comments to
Sharon McCauley, Mailcode 3WC21,
RCRA State Programs Branch, U.S. EPA
Region III, 1650 Arch Street,
Philadelphia, PA 19103, Phone number:
(215) 814-3376. EPA must receive your
comments by June 9, 2000. Copies of the
West Virginia program revision
application and the materials which
EPA used in evaluating the revision are
available for inspection and copying
from 8 a.m. to 4:30 p.m., Monday
through Friday at the following
addresses: West Virginia Division of
Environmental Protection, Office of
Waste Management, 1356 Hansford
Street, Charleston, WV 25301-1401,
Phone number: 304-558-4253 and EPA
Region III, Library, 2nd Floor, 1650
Arch Street, Philadelphia, PA 19103,
Phone number: (215) 814-5254.

FOR FURTHER INFORMATION CONTACT:
Sharon McCauley, Mailcode 3WC21,
RCRA State Programs Branch, U.S. EPA
Region III, 1650 Arch Street,
Philadelphia, PA 19103, Phone number:
(215) 814-3376.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

RCRA, as amended by the Hazardous
and Solid Waste Amendments of 1984
(HSWA), provides for authorization of
State hazardous waste programs under
Subtitle C. Under RCRA section 3006,
EPA may authorize a State to administer
and enforce the RCRA hazardous waste

program. See also 40 CFR part 271. In fact, Congress designed RCRA so that the entire Subtitle C program would eventually be administered by the States in lieu of the Federal Government. This is because the States are closer to, and more familiar with, the regulated community and therefore are in a better position to administer the programs and respond to local needs effectively.

After receiving authorization, the State administers the program in lieu of the Federal government, although EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003. Authorized States must revise their programs when EPA promulgates "new" Federal Standards that are more stringent or broader in scope than existing Federal Standards. States are not required to modify their programs when "new" Federal changes are less stringent than the existing Federal program or when changes reduce the scope of the existing Federal program. These changes are optional and are noted as such in the **Federal Register** (FR) documents in which the new Federal Standards are promulgated.

States which have received Final authorization for EPA under section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made In this Rule?

EPA concludes that West Virginia's application for authorization of its program revisions meets all applicable statutory and regulatory requirements established by RCRA. Accordingly, EPA grants West Virginia Final authorization to operate its hazardous waste program as revised. West Virginia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA. West Virginia also has primary enforcement responsibilities, although EPA retains

the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

C. What is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in West Virginia subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. West Virginia has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which West Virginia is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and expects no comments that oppose this action. EPA is providing an opportunity for public comment now. In the proposed rules section of today's **Federal Register** EPA is publishing a separate document that proposes to authorize the State changes. If EPA receives comments which oppose this authorization or portion(s) thereof, that document will serve as a proposal to authorize such changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization decision or portion(s) thereof, we will withdraw this authorization decision, or those portion(s) for which EPA received comments opposing its decision, by publishing a document in the **Federal Register**. We will address all public comments in a subsequent final action based on the proposed rule.

If EPA receives comments that oppose only the authorization of a particular change to the State hazardous waste

program, we may withdraw only that part of today's authorization rule. The authorization of the program changes that are not opposed by any comments may become effective on July 10, 2000. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

You should send written comments to Sharon McCauley, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814-3376. We must receive your comments by June 8, 2000. You may not have an opportunity to comment again. If you want to comment on this action you must do so at this time.

F. What Has West Virginia Previously Been Authorized For?

West Virginia initially received Interim authorization, Phase I and Phase II, Components A and B on March 28, 1984. Effective May 29, 1986 (51 FR 17739), West Virginia received Final authorization to implement its base hazardous waste management program. Since receiving Final authorization, West Virginia has restructured its hazardous waste management program and revised its statutes and regulations. West Virginia's Attorney General's Statement, dated April 18, 1986, which was a component of the State's original Final authorization, cited the West Virginia Code, Chapter 20, Article 5E, as the State Hazardous Waste Management Act (HWMA). The West Virginia HWMA, Chapter 20 Article 5E, was originally written to give the primary implementation authority for the State's hazardous waste program (HWP) to the West Virginia Department of Natural Resources (WVDNR). Therefore, from 1981 until 1992, the WVDNR was the lead agency assigned HWP responsibilities. The State government, however, underwent a major reorganization in 1992 and the West Virginia Division of Environmental Protection (WVDEP) was formed. On July 1, 1992, Executive Order No. 8-92 signed by Governor Gaston Caperton transferred all sections of the Office of Waste Management from the WVDNR to the WVDEP. Subsequently, during the 1994 State Legislative Session, the Environmental Protection Reorganization Bill was passed, officially transferring all environmental statutes formerly enforced by the WVDNR to the WVDEP. In July 1994, the West Virginia Legislature enacted into law Article 18 of Chapter 22 of the West Virginia Code (W. Va. Code) which replaced Article 5E of Chapter 20 of the West Virginia as the State Hazardous

Waste Management Act (HWMA). The WVDEP was originally under the Department of Labor, Commerce and Environmental Resources. This Department was abolished by the Legislature in 1994, and the agencies were reorganized, with the WVDEP being placed under the Bureau of Environment. The Director of WVDEP also is the Commissioner of the Bureau of Environment and answers directly to the Governor.

The Office of Waste Management (OWM) is the office within WVDEP that is primarily responsible for regulation of hazardous waste management within the State. In 1997, OWM was restructured and an additional agency, the Office of Environmental Remediation, was created to regulate brownfields and voluntary clean-up sites. Additionally, within the WVDEP, the Office of Air Quality (OAQ) regulates hazardous waste air emissions; and outside of the WVDEP, two additional agencies, the Division of Highways (DOH) and the Public Service Commission (PSC), regulate aspects of hazardous waste transportation. Within the OWM, regulatory authority over hazardous waste is assigned to Compliance Assurance and Emergency Response (CAER) and the Hazardous Waste Management Section (HWMS). All aspects of hazardous waste management including compliance monitoring, enforcement and permitting are handled by these two sections, with the exception of air permits, which are handled by the OAQ. The OWM's Compliance Assurance and Emergency Response is the lead agency for communication between the State and the EPA, although HWMS and OAQ communicate with EPA on specific matters. CAER works with the Office of Legal Services (OLS) within DEP on matters such as the review of proposed rules and regulations and civil enforcement actions. West Virginia Code section 22-1-6(d)(7) (1996 Cumulative Supplement) authorized the Director of WVDEP to "employ in-house counsel to perform all legal services for the director and division, including, but not limited to, representing the director, any chief, the division or any office thereof in any administrative proceedings or in any proceeding in state or federal court."

The State Legislature has made numerous amendments to the regulations promulgated under the State's Hazardous Waste Management Act in order to remain consistent with, and equivalent to, the Federal regulations promulgated under RCRA Subtitle C. Specifically, West Virginia has revised the format of its hazardous waste regulations to one of adoption and incorporation of the full text of the Federal regulatory language, with modifications made as necessary, to incorporation of the Federal regulations by reference. Incorporation by reference is authorized by W. Va. Code section 22-1-3(c) which states "if the director determines that the rule should be the same in substance as a counterpart regulation, then to the greatest degree practical, such proposed rule shall incorporate by reference the counterpart federal regulation."

West Virginia submitted, on an annual basis, several draft regulations to EPA. The Agency reviewed each set of draft regulations and submitted comments to West Virginia. On January 13, 2000, West Virginia submitted a final complete program revision application, seeking authorization for the restructuring of its hazardous waste program, as well as authorization of its additional program revisions, in accordance with 40 CFR 271.21. EPA Region III worked closely with West Virginia to develop the authorization package; therefore, EPA's comments relative to West Virginia's legal authority to carry out the Federally-delegated programs, the scope of and coverage of activities regulated, State procedures, including the criteria for permit reviews, public participation and enforcement capabilities, were addressed before the submission of the final application by the State. The State also solicited public comments on its draft regulations. The EPA reviewed West Virginia's application, and now makes an immediate final decision, subject to receipt of adverse written comments, that West Virginia's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Consequently, EPA intends to grant West Virginia Final authorization for the program modifications contained in the program revision application.

G. What Revisions Are We Authorizing With Today's Action?

West Virginia's program revision application includes State regulatory changes that are equivalent to the Federal regulations published in the July 1, 1997 version of Title 40 of the Code of Federal Regulations, parts 124, 260 through 266, 268, 270, 273 and 279, plus the Federal requirements for "Availability of Information," as addressed in RCRA section 3006(f), and the final rules published in the **Federal Register** on December 8, 1997 (62 FR 64636), May 26, 1998 (63 FR 28556), June 8, 1998 (63 FR 31266) and June 19, 1998 (63 FR 33782).

West Virginia is today seeking authority to administer the Federal requirements that are listed in the chart below. This chart also lists the State analogs that are being recognized as no less stringent than to the appropriate Federal requirements. Unless otherwise stated, the State's statutory references are to the West Virginia Code (W. Va. Code), 1994 Cumulative Supplement, Chapter 22—Environmental Resources, Article 1 (Division of Environmental Protection), Article 5 (Air Pollution Control), and Article 18 (Hazardous Waste Management Act). The regulatory references are to the following Legislative Rules: Title 33, Series 20, Code of State Regulations (33CSR20), "Hazardous Waste Management Rule", effective July 1, 1999; 45CSR25, "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities," effective June 1, 1999; 157CSR7, "Emergency Rulemaking for the Transportation of Hazardous Wastes Upon Roads and Highways," effective April 28, 1999; as well as the proposed rules for "Transportation of Hazardous Waste Upon Roads and Highways" submitted to the State Legislative Review Committee on October 5, 1999; 150CSR11, "Rules and Regulations Governing the Transportation of Hazardous Waste By Rail," effective November 8, 1999; 46CSR12, "Requirements Governing Groundwater Standards," effective July 1, 1998; and 46CSR8, "Rules on Requests for Information," effective February 18, 1996.

| Federal requirement ¹ | Analogous West Virginia authority |
|--|---|
| Part 260—Hazardous Waste Management System: General, as of July 1, 1997. | West Virginia Code (W. Va. Code) §§ 22-18-3, 22-18-5(a), 22-18-6(a), 22-18-6(a)(12)(D), 22-18-23; Hazardous Waste Management Regulations (HWMR) §§ 33-20-1.1, 33-20-1.6, 33-20-2.1 (except 2.1.a.2 and a.3), 33-20-2.2, 33-20-2.3, 33-20-2.4, 33-20-2.5, 45-25-1.5.a/Table 25-A (Item 22), 45-25-2, 45-25-3.1, 150-11-1.5, 150-11-6, 150-11-7, 157-7-2. |

| Federal requirement ¹ | Analogous West Virginia authority |
|---|--|
| Part 261—Identification and Listing of Hazardous Waste, as of July 1, 1997. | W. Va. Code §§ 22-18-6(a)(2), 22-18-6(a)(12), 22-18-6(a)(13)(C), 22-18-5(a), 22-18-6(a), 22-18-23; HWMR §§ 33-20-1.6, 33-20-2.3, 33-20-3.1, 33-20-3.2, 33-20-3.4, 33-20-4.2.b, 45-25-1.5.a-Table 25-A (Item 20), 45-25-4.15, 45-25-6.1, 45-25-6.2, 150-11-1.5, 157-7-2.1. |
| Part 262—Standards Applicable to the Generators of Hazardous Wastes, as of July 1, 1997. | W. Va. Code §§ 22-18-6(a), 22-18-6(a)(3), 22-18-6(a)(12)(D), 22-18-6(a)(15), 22-18-6(a)(9), 22-18-7(a)-(c), 22-18-5(a), 22-18-23; HWMR §§ 33-20-1.6, 33-20-4, 33-20-5.1, 33-20-5.2, 33-20-5.3, 33-20-5.4, 45-25-1.5.a-Table 25-A (Item 21), 157-7-3.1.1. |
| Part 263—Standards Applicable to the Transporters of Hazardous Wastes, as of July 1, 1997. | W. Va. Code §§ 22-18-5(a), 22-18-6(a)(9), 22-18-6(a)(12)(D), 22-18-6(a)(15), 22-18-7(a)-(c), 22-18-23, 22-18-2(b)(2); HWMR §§ 33-20-1.6, 33-20-4, 33-20-6.1, 33-20-6.2, 150-11-1.1, 150-11-1.6, 150-11-1.7, 150-11-1.8, 150-11-1.10, 150-11-1.11, 150-11-1.13.1 & 1.13.2, 150-11-2.1.1, 150-11-2.1.2, 150-11-2.2 through 2.8, 150-11-3.1 through 3.4, 150-11-5.1 through 5.5, 157-7-1.1, 157-7-1.6, 157-7-2.7, 157-7-3.1 through 3.5, 157-7-4.2, 157-7-4.3, 157-7-5.1, 157-7-5.3, 157-7-5.4, 157-7-6.1 through 6.5. |
| Part 264—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, as of July 1, 1997. | W. Va. Code §§ 22-18-5(a)&(c), 22-12-4, 22-18-6(a), 22-18-6(a)(4), 22-18-6(a)(12)-(15), 22-18-7(e), 22-18-23, 22-18-25(1), 22-5-1, 22B-3-4; HWMR §§ 33-20-1.6, 33-20-1.6/25-A (Item 10), 33-20-4, 33-20-7.1, 33-20-7.2, 33-20-7.4, 33-20-7.5, 33-20-7.6, 33-20-7.7, 33-20-7.8, 33-20-12, 45-25-1.1.a & b, 45-25-3.2, 45-25-3.2/25-A (Items 1, 4, 6, 8, 10), 45-25-4.1, 45-25-4.2, 45-25-4.3, 45-25-4.4, 45-25-4.5/25-A (Item 10), 45-25-4.6/25-A (Item 10), 45-25-4.7, 45-25-4.8, 45-25-4.9, 45-25-4.10, 45-25-4.11, 45-25-4.12, 45-25-4.15. |
| Part 265—Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, as of July 1, 1997. | W. Va. Code §§ 22-18-11, 22-18-5(a), 22-18-23, 22-18-6(a)(4); HWMR §§ 33-20-1.6, 33-20-8.1 through 8.6, 45-25-1.1.a & b, 45-25-3.2.d, 45-25-3.2/25-A (Items 1, 6, 8, 10, 12), 45-25-4.1, 45-25-4.2, 45-25-4.3, 45-25-4.4, 45-25-4.5, 45-25-4.6, 45-25-4.7, 45-25-4.9, 45-25-4.10, 45-25-4.11, 45-25-4.15. |
| Part 266—Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities, as of July 1, 1997. | W. Va. Code §§ 22-18-5(a)&(c), 22-18-6(a), 22-18-6(a)(12), (13) & (15), 22-18-23, 22-5-1; HWMR §§ 33-20-1.6, 33-20-9, 45-25-1.1.a & b, 45-25-3.2/25-A (Item 13), 150-11-1.1, 150-11-1.5, 150-11-10.1, 150-11-10.2 through 10.4, 150-11-10.5, 157-7-1.1, 157-7-1.6, 157-7-5.1. |
| Part 268—Land Disposal Restrictions, as of July 1, 1997 | W. Va. Code §§ 22-18-5(a), 22-18-6(a)(12)(A), 22-18-6(a)(12)(B); 22-18-6(a)(12)(D), 22-18-23, 22-18-6(a)(2); HWMR §§ 33-20-1.6, 33-20-10.1 through 10.4. |
| Part 270—The Hazardous Waste Permit Program, as of July 1, 1997. | W. Va. Code §§ 22-18-8, 22-18-6(a)(4)(G), 22-18-6(a)(5), 22-18-6(a)(8), 22-18-6(a)(11), 22-18-6(a)(13)(A),(B),&(C), 22-18-10, 22-18-11, 22-18-5(a), 22-18-23, 22-18-12; HWMR §§ 33-20-1.6, 33-20-11.1, 33-20-11.2, 33-20-11.3, 33-20-11.19, 33-20-11.20, 33-20-11.21, 33-20-11.22, 45-25-2, 45-25-3.2/25-A (Items 2, 3, 5, 7, 9, 11, 14, 15, 18, 19), 45-25-4.13, 45-25-4.14, 45-25-5.15, 45-25-5.16. |
| Part 124—Permit Procedures, as of July 1, 1997 | W. Va. Code §§ 22-18-8, 22-18-6(a)(5), 22-18-6(a)(8), 22-18-10, 22-18-23; HWMR §§ 33-20-11.8.a-f, 33-20-11.5, 33-20-11.6, 33-20-11.7, 33-20-11.9 (except 11.9.d), 33-20-11.10, 33-20-11.11, 33-20-11.12, 33-20-11.13, 33-20-11.14, 33-20-11.15, 33-20-11.16, 33-20-11.18.a, 33-20-11.18.b (except 11.18.b.7), 33-20-11.18.d, 45-25-5.4.a-f, 45-25-5.1, 45-25-5.2, 45-25-5.3, 45-25-5.5 (except 5.5.d), 45-25-5.6, 45-25-5.7, 45-25-5.8, 45-25-5.9, 45-25-5.10, 45-25-5.11, 45-25-5.12, 45-25-5.13, 45-25-5.14.a, 45-25-5.14.b, 45-25-5.14.d. |
| Part 273—Standards for Universal Waste Management, as of July 1, 1997. | W. Va. Code §§ 22-18-5(a) and § 22-18-23; HWMR §§ 33-20-1.6, 33-20-2.5.d, 33-20-13.1, 33-20-13.4 through 13.8, 150-11-1.1, 150-11-8.1 through 8.7, 157-7-1.1, 157-7-1.6, 157-7-5.1. |
| Part 279—Standards for the Management of Used Oil, as of July 1, 1997. | W. Va. Code §§ 22-18-6(a)(14), 22-18-6(a)(15), 22-18-23; HWMR §§ 33-20-1.6, 33-20-14.1, 33-20-14.2, 33-20-14.3, 45-25-3.2/25-A (Item 16 & 17), 150-11-1.1, 150-11-1.12, 150-11-9.1, 150-11-9.2, 150-11-9.3 through 9.9, 157-7-1.1, 157-7-1.6, 157-7-5.1. |
| Non-HSWA Cluster I | |
| Availability of Information (AI) (RCRA 3006(f) Checklist) .. | W. Va. Code § 22-18-12; The West Virginia Freedom of Information Act, W. Va. Code (1994 Supplement) Chapter 29B, § 29B-1-1 <i>et seq.</i> ; HWMR §§ 33-20-11.19, 46-8-1 through 46-8-11. |
| HSWA Cluster I | |
| Sharing of Information With the Agency for Toxic Substances and Disease Registry (SI) (RCRA § 3019(b)). | W. Va. Code §§ 22-1-6(c), 22-18-12; HWMR § 33-20-11.19. |
| RCRA Cluster VIII | |
| Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, December 8, 1997 (62 FR 64636). (Revision Checklist 163). | W. Va. Code §§ 22-1-3(c), § 22-5-1, 22-18-6(a), 22-18-6(a)(13)(A)&(B); 22-18-23; HWMR §§ 33-20-1.6, 33-20-7.2, 33-20-7.8, 33-20-8.1, 33-20-8.6, 33-20-11.1, 45-25-1.1.a, & b, 45-25-1.5.a, 45-25-1.5.c, 45-25-3.2/25-A (Items 6, 8, 10, 11). |

| Federal requirement ¹ | Analogous West Virginia authority |
|--|--|
| Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Metals and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, May 26, 1998 (63 FR 28556), as amended on June 8, 1998 (63 FR 31266). (Revision Checklists 167A–F). | W. Va. Code §§ 22–18–6(a), 22–18–6(a)(12)(A), 22–18–6(a)(12)(B), 22–18–6(a)(12)(D), 22–18–23; HWMR §§ 33–20–1.6, 33–20–3.1, 33–20–3.5, 33–20–10.1, 33–20–10.6. |
| Hazardous Waste Combustors Revised Standards, June 19, 1998 (63 FR 33782). (Revision Checklist 168). | W. Va. Code §§ 22–18–6(a), 22–18–6(a)(5), 22–18–23; HWMR §§ 33–20–3.6, 33–20–11.9.d, 45–25–5.5.d, 45–25–6.3. |

¹ Federal Regulations as Published in the 40 CFR, as of July 1, 1997 (Base Program through RCRA Cluster VIII).

In today's action, EPA is authorizing West Virginia's program revisions based in part on emergency rules adopted by the West Virginia Division of Highways. Also in today's action, EPA is authorizing rules that are expected to be adopted by the West Virginia Legislature by March 30, 2000 which will replace the above-referenced emergency rules. These legislatively-adopted rules will be identical to the emergency rules, with the exception that the current incorporation by reference date of the Federal regulations will be updated from July 1, 1997 to July 1, 1998, and the current incorporation by reference date of the West Virginia Office of Waste Management's rules will be updated from July 1, 1998 to July 1, 1999, which is only a ministerial change without any legal implication for the purpose of these rules. EPA's authorization of these legislative rules will take effect on the date West Virginia's legislative rules take effect, which is likely to be on or before July 1, 2000—before the expiration of the emergency rules.

Due to an administrative oversight, the West Virginia Division of Highways did not submit final regulatory changes to the 1999 session of the West Virginia Legislature for approval, after the initial legislative review of draft regulations. In an effort to rectify this situation, the West Virginia Division of Highways adopted emergency rules on April 28, 1999 to address necessary regulatory revisions. These regulatory revisions were necessary to conform to updated EPA regulations and regulations of companion state agencies involved in the regulation of hazardous waste. These emergency rules (1) update obsolete regulatory and statutory references, along with new agency names, addresses and telephone numbers, (2) add provisions to require transporters to give a copy of the manifest to a U.S. Customs official at the point where waste departs from the United States, and (3) in accordance with EPA regulations, relax manifesting requirements for military munitions,

universal wastes and used oil to be consistent with federal Department of Transportation rules. The Division of Highways' emergency rules are in effect only for 15 months (i.e., until July 28, 2000) or until rules adopted by the Legislature replace them, whichever occurs first.

EPA does not typically authorize states based in part on emergency rules because of their temporary nature. However, EPA is confident that the West Virginia Legislature will approve the conforming legislative rules that the Division of Highways will submit for approval in the upcoming legislative session because: (1) in preparation for the prior session of the Legislature, a legislative review committee already reviewed and commented on an initial draft of the regulations; (2) the Legislature has already approved substantively similar regulations for three other co-regulating authorities in West Virginia; and (3) the legislative review committee has already concurred on the regulations to be submitted for legislative approval in the spring of 2000.

EPA intends to authorize, at this time, both the Division of Highways' emergency rules and the legislative rules that will replace them. This eliminates the need for West Virginia to apply for, and for EPA to approve, a formal program revision for a perfunctory procedure which makes the Division of Highways' emergency rules permanent. Also, by authorizing the emergency and the legislative rules in one action rather than in two separate actions, it will be clearer to the public that both these aspects of the West Virginia hazardous waste program are now Federally authorized.

H. Where Are the Revised State Rules Different From the Federal Rules?

The West Virginia hazardous waste program contains several provisions which are more stringent than is required by the RCRA program. The more stringent provisions are being recognized as a part of the Federally-

authorized program and include the following:

1. At HWMR section 33–20–2.5, West Virginia is more stringent because the State has additional requirements for persons who have petitioned and received approval from EPA to include additional wastes as universal wastes.

2. West Virginia's provision at HWMR section 33–20–3.1.a is more stringent in that there are additional requirements to satisfy in order to qualify for an exemption as an operator of a wastewater treatment facility receiving mixtures of wastes.

3. At HWMR section 33–20–3.2, West Virginia excepts 40 CFR 261.5(f)(3)(iv)&(v) and 261.5(g)(3)(iv) and (v) from incorporation by reference and subjects conditionally exempt small quantity generators (CESQs) to the notification requirements at HWMR section 33–20–4. West Virginia is more stringent because unlike the Federal provisions at 40 CFR 261.5(f)(3)(iv)&(v) and 261.5(g)(3)(iv)&(v), the State does not allow CESQs to deliver hazardous wastes to facilities that are permitted, licensed or registered to manage municipal solid waste or non-municipal non-hazardous waste. The State is also more stringent by subjecting CESQs to the notification requirements located in HWMR section 33–20–4.

4. At HWMR section 33–20–4.2.b, West Virginia subjects persons exempted from the Federal notification requirements as specified at 40 CFR 261.6(b) to the State's notification requirements.

5. At HWMR section 33–20–5.3 and 5.4, West Virginia has adopted the requirements addressed by 40 CFR part 262, subparts E and H, and has correctly left the implementation authority with EPA for the non-delegable hazardous waste import and export requirements. West Virginia is more stringent in that at sections 33–20–5.3 and 5.4, the State requires that copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA must also be submitted to the Chief of the Office of

Waste Management within the same timeframes as specified in 40 CFR part 262, subparts E and H.

6. At HWMR section 33-20-7.4, West Virginia makes it clear that the notification requirements at 40 CFR 264.12(a)(1)&(2) are retained by EPA; however, the State requires that identical notice be sent to the Chief of the Office of Waste Management. This makes the State more stringent.

7. At HWMR section 33-20-8.3, West Virginia excepts the provisions of 40 CFR 265.12(a) from its incorporation by reference; thus, the provisions are retained by EPA. The State requires that identical notice be sent to the Chief of the Office of Waste Management, thus making the State more stringent.

8. At HWMR sections 150-11-5.3.1 & .2 and 157-7-6.3.1 & .2, West Virginia has more stringent notification requirements than 40 CFR 263.30(c)(1). Also, West Virginia has more stringent reporting requirements at sections 157-7-6.4.1 & .2 than found at 40 CFR 263.30(c)(2).

9. At HWMR section 33-20-13.6, West Virginia excepts 40 CFR 273.20, 273.40, and 273.56 from the substitution of terms in Subdivision 1.6.a. By doing so, EPA remains the regulatory agency for exports. The State is more stringent in that persons subject to the provisions of 40 CFR 273.20, 273.40, and 273.56 must file copies of all records submitted to EPA with West Virginia's Chief of the Office of Waste Management.

The State's regulations include a number of provisions that are not part of the State's program being authorized by today's action. Such provisions include the following:

1. West Virginia is not seeking authorization for the Federal delisting requirements at 40 CFR 260.22 [Revision Checklist 17B (50 FR 28702-28755, July 15, 1985), as amended (54 FR 27114, June 27, 1989)]. However, at section 33-20-2.4, the State requires that persons desiring to exclude a waste at a particular facility from the lists set forth at 40 CFR part 261 may petition the Chief of the Office of Waste Management for such an exclusion after having received approval from the Administrator of the Environmental Protection Agency. At section 33-20-2.4.a through 33-20-2.4.c, the State has additional requirements for persons who have petitioned and received approval from EPA to exclude a waste at a particular facility. At section 33-20-2.5, the State also has additional requirements for persons who have petitioned and received approval from EPA to include additional wastes as universal wastes. The State is planning to apply for this provision in subsequent

authorization revision applications to be submitted on an annual basis, as necessary.

2. West Virginia is not seeking authority over the Federal corrective action program under HSWA as addressed by Revision Checklist 17L (50 FR 28702-28755, July 15, 1985), Revision Checklist 44A (52 FR 45788-45799, December 1, 1987), Revision Checklist 44B (52 FR 45788-45799, December 1, 1987), Revision Checklist 44C (52 FR 45788-45799, December 1, 1987), and Revision Checklist 121 (58 FR 8658-8685, February 16, 1993). EPA will continue to administer this part of the program. The State is planning to apply for this provision in subsequent authorization revision applications to be submitted on an annual basis, as necessary.

3. The provisions in 40 CFR part 262, subpart H were added by the final rule addressed by Revision Checklist 152 (61 FR 16920-16316, April 12, 1996). West Virginia has incorporated the 40 CFR part 262, subpart H provisions into its regulations; however, the State has excepted these requirements from the substitution of terms at section 33-20-1.6.a; because, those provisions that are not delegable to States remain the purview of EPA. West Virginia is not seeking authorization for the items in this checklist.

4. The West Virginia provisions at W. Va. Code section 22-18-6(a)(11), HWMR sections 33-20-11.4 and 45-25-7, addressing permit fees, are broader in scope than the Federal program.

5. In addition to pesticides, lead acid batteries, and thermostats included, at HWMR sections 33-20-2.1.a.2, 33-20-2.1.a.3, 33-20-3.3, 33-20-7.3, 33-20-8.2, 33-20-10.2, 33-20-11.2, 33-20-13.2, 33-20-13.4 and 33-20-13.5, West Virginia also regulates mercury containing lamps as a universal waste, subject to the requirements of 40 CFR part 273, which the State incorporates by reference. The final rule of May 11, 1995 (60 FR 25492) permits States to add other hazardous wastes to their universal waste program. However, West Virginia is being authorized for only the three wastes streams included in the Federal program. The State is not being authorized for its requirements for mercury containing lamps. The State is planning to apply for this provision in subsequent authorization revision applications to be submitted on an annual basis, as necessary.

6. At W. Va. Code sections 22-18-25(2) and 22-18-25(3), West Virginia has authority that is analogous to RCRA section 3004(t) addressing direct cause of action against insurers. The Federal requirement is not applicable to States.

West Virginia's law equivalent to RCRA section 3004(t) operates separately from the Federal law. In this situation, the West Virginia law which provides for a direct cause of action against insurers creates a parallel cause of action viable in State courts, but the cause of action does not limit the availability of the Federal action.

7. West Virginia is not seeking authorization for the Office of Air Quality provision at HWMR section 45-25-4.12 which requires owners and operators of hazardous waste treatment, storage and disposal facilities to use best available control technology (BACT) to limit the discharge of hazardous waste constituents to the atmosphere.

8. West Virginia's definition of solid waste at W. Va. Code section 22-18-3(16) is the same as the Federal definition at RCRA section 1004(27). W. Va. Code section 22-18-6(a)(2) provides the State with the authority to establish criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. However, West Virginia is not seeking authorization for the regulation of radioactive mixed wastes. The State is planning to apply for this provision in subsequent authorization revision applications to be submitted on an annual basis, as necessary.

Unless EPA receives comments opposing this action by June 9, 2000 and publishes a **Federal Register** document withdrawing the immediate final rule or portions thereof, this Final authorization approval will become effective without further notice on July 10, 2000.

I. Who Handles Permits After This Authorization Takes Effect?

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based on the Federal provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA will also transfer any pending permit applications and pertinent file information to the State within thirty (30) days of the effective date of this authorization.

Upon authorization of the State program for any additional portions of HSWA, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal

facilities mandated by HSWA in the State, in those areas for which the State is receiving authorization. If EPA promulgates standards for additional processes or regulations mandated by HSWA not covered by the State's authorized program, EPA will process and enforce RCRA permits in the State in those new areas until the State receives final authorization of equivalent State standards. At such time that the State program is approved in the new areas, EPA will suspend issuance of Federal permits issued at the request of the permittee pursuant to 40 CFR 124.5 and 271.8.

EPA will be responsible for enforcing the terms and conditions of the Federal portion of the permits until they expire or are terminated in accordance with 40 CFR 124.5 and 271.8.

The State and EPA will jointly administer implementation of those HSWA provisions for which the State has not received authorization until such time as it receives authorization from EPA to implement the remaining HSWA provisions in lieu of EPA.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in West Virginia?

West Virginia is not seeking authorization to operate the program on Indian lands, since there are no Federally-recognized Indian Lands in the State.

K. What Is Codification and Is EPA Codifying West Virginia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA uses 40 CFR part 272 for codification of the decision to authorize West Virginia's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA reserves amendment of 40 CFR part 272, subpart XX, for such future use.

L. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit

analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of \$100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the West Virginia program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not apply to duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject

to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) a small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing State requirements.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of

Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves West Virginia's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in West Virginia in lieu of the equivalent Federal program provisions implemented by EPA under HSWA.

Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not concern an environmental health or safety risk that may have a disproportionate effect on children.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with the consulting option, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect communities of Indian tribal governments. West Virginia is not authorized to implement the RCRA hazardous waste program in Indian country, since there are no Federally-recognized Indian lands in the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve such technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00-11426 Filed 5-9-00; 8:45 am]

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