

US EPA ARCHIVE DOCUMENT

PROGRAM DESCRIPTION

PROGRAM DESCRIPTIONPage1. Introduction

1.1	Program Description Explanation and Contents	1
1.2	General Program Background	1
1.3	Program Principles	2
1.3.1	Equivalent and No Less Stringent Program	3
1.3.2	Consistency	6
1.3.3	More Stringent Standards	6
1.3.4	Adequate Enforcement	
1.3.5	Notice and Hearing in the Permit Process	3

2. Program Overview

2.1	Scope	9
2.2	Structure	10
2.3	Coverage	12
2.3.1	Applicability of Program Element	12
2.3.2	Regulated Activities	13
2.4	Processes	14
2.4.1	Permitting	14
2.4.2	Compliance Evaluation and Enforcement Process	15
2.4.3	Public Participation	17
2.4.4	Appellate Process	19

3. Program Description

3.1	Organization and Structure of State Agencies	20
3.1.1	Dept. of Natural Resources/ Div. of Water Resources	20
3.1.2	Air Pollution Control Commission	20
3.1.3	Department of Highways	21
3.1.4	Public Service Commission	23
3.1.5	Water Resources Board	23
3.2	Agency Responsibility	23
3.2.1	Division of Water Resources	23
3.2.2	Air Pollution Control Commission	27
3.2.3	Department of Highways	27
3.2.4	Public Service Commission	27
3.3	Lead Agency	27
3.3.1	Role/Relationship	27
3.3.2	Coordination	27

PROGRAM DESCRIPTION

	<u>Page</u>
3.4 Staffing	29
3.4.1 DNR/DWR Staffing	29
3.4.2 APCC Staffing	32
3.4.3 DOH Staffing	32
3.4.4 PSC Staffing	33
3.4.5 WRB Staffing	33
3.4.6 Staffing Summary	33
3.5 Costs and Funding	34
3.5.1 Current and Proposed HWMP Costs	34
3.5.2 Funding Estimates	34
4. <u>State Procedures</u>	
4.1 TSD Facility Permitting	38
4.1.1 Permit Application	38
4.1.2 State Permitting Process	38
4.1.3 Application Review	44
4.1.4 Appellate Review	45
4.1.4.1 WRB	45
4.1.4.2 APCC	45
4.2 Program Revision Procedures	47
5. <u>Compliance and Enforcement</u>	
5.1 Statutory Enforcement Authority	49
5.1.1 Enforcement Orders	49
5.1.2 Civil Suits	50
5.1.3 Civil Penalties	50
5.1.4 Criminal Fines and Penalties	50
5.1.5 Public Participation	50
5.2 Agency Enforcement Programs	51
5.2.1 Dept. of Natural Resources	51
5.2.1.1 Regular CEIs	51
5.2.1.2 Investigation of Non-Compliance	51
5.2.1.3 Sample Collection/Analysis	51
5.2.1.4 Enforcement Follow-up Inspections	52
5.2.2 Air Pollution Control Commission	52
5.2.2.1 Regular Compliance Inspections	52
5.2.2.2 Investigation of Non-Compliance	52
5.2.2.3 Sample Collection/Analysis	53
5.2.3 Department of Highways	53
5.2.3 Public Service Commission	54

PROGRAM DESCRIPTION

	<u>Page</u>
6. <u>Manifest System</u>	55
7. <u>Estimates of Regulated Activities</u>	
7.1 Estimated Hazardous Waste Quantities	56
7.2 Estimated Numbers and Types of Regulated Activities	56

INTRODUCTION

1.1 Program Description Explanation and Contents

The program description is a major portion of the State's application to assume primacy of the EPA RCRA hazardous waste program. It is a narrative description of the scope, structure, coverage, and processes of the State's Hazardous Waste Management Program (HWMP). The purpose of the program description is to explain how the State will administer the delegated federal program. It includes a description of the "lead agency" and the other State agencies which have responsibility for administering the program. The responsibilities of each agency, their structure coordination procedures, and the methods for facilitating communications between EPA and the State are delineated.

Chapter 3 is a description of the State agency staff who carry out the program, an itemization of the estimated costs of establishing and administering the program, as well as an itemization of the sources and amounts of funding. Chapter 4 provides a description of applicable State procedures, including permitting and appeals. Included in subsequent chapters are a description of the compliance and enforcement programs as well as the manifest system for off-site shipment of hazardous waste, an estimate of the amounts of hazardous waste generated in the State and a breakdown of the types of facilities regulated by the State's program.

In the hope of making program evaluation easier for federal reviewers an attempt was made to provide Program Description information in the same sequence as shown in the EPA RCRA Guidance Manual and 40 CFR Part 271 regulations.

1.2 General Program Background

In March of 1981 the West Virginia Legislature enacted into law Article 5E of Chapter 20 of the Code of West Virginia. See Volume II, Statute and Regulations, Appendix I. Article 5E is the State's Hazardous Waste Management Act (HWMA), and was effective in July of 1981. In addition to requiring the safe handling, storage, treatment and disposal of hazardous waste, one of the purposes of Article 5E is for the State to assume primacy of EPA's RCRA Subtitle C program (hazardous waste). Because there are several agencies sharing responsibility for implementing Article 5E, the West Virginia Department of Natural Resources (DNR) was designated as the "lead agency." W. Va. Code §20-5E-4. Most recently, the West Virginia Legislature enacted SB 649 amending the HWMA. These amendments came at EPA's urging and are designed to clarify and upgrade the HWMA so that it is consistent and equivalent with RCRA Subtitle C.

The State has been proceeding towards assuming primacy for the past four years. In May, 1983, the State applied for "interim" authorization of the EPA RCRA Subtitle C program. Phase I and II interim authorization was granted by EPA on March 28, 1984. (Phase I is that portion of the EPA HWMP commencing on November 19, 1980; Phase II is that portion of the EPA HWMP commencing in July of 1981.) Interim authorization allows the State to operate the federal program in lieu of EPA for generators, transporters, and owners and operators of treatment, storage and disposal facilities (except land disposal facilities which is not a part of either Phase I or Phase II interim authorization).

While proceeding through interim and now toward final authorization the State conducted a survey of hazardous waste management practices which inventoried all hazardous waste generators, treatment, storage and disposal facilities in the State. See West Virginia Hazardous Waste Survey (July 1982). During the 1984 legislative session, the Department of Natural Resources received its first state appropriation for hazardous waste management in the amount of \$200,000. Prior to this appropriation, funding for the program was provided by EPA and by utilizing resources from other programs.

The following program description for final authorization relies on previous work performed by the several State hazardous waste management agencies and the inventory. According to EPA regulations [40 CFR §271.21(e)] applications for final authorization are reviewed on the basis of the federal program which is in effect twelve (12) months prior to the State's application. Consequently, the State's application must detail how the State complies with the federal program which was in place one year prior to this submission (May 1, 1984). Therefore, recent congressional changes to the RCRA program in the Hazardous and Solid Waste Amendments of 1984 (HSWA) are not addressed.

1.3 Program Principles

*10/150
2702
attaches the
interim authorization*

The State Hazardous Waste Management Program (HWMP) contains the basic provisions to qualify for RCRA final authorization. The federal program guidance provides six principles for such authorization. These principles include:

- Equivalent program,
- No less stringent program,
- Consistent program,
- Identification of State program elements which are more stringent than the federal program,
- Adequate enforcement, and
- Notice and hearing in the permit process.

The following paragraphs describe, generally, how the State HWMP meets these program delegation principles. See also the Attorney General Statement attachment to this application package.

1.3.1 Equivalent and No Less Stringent Program

The first and second principles require the State Program to be equivalent to and no less stringent than the federal program. In all instances the State program meets the requirements of the federal program as of May 1, 1984.

The State controls the same universe of wastes as the federal program. The State has adopted the federal list of wastes as well as the same set of characteristics for identifying hazardous wastes. The State list and characteristics, therefore, are identical to the federal counterparts.

The State regulates all generators that are regulated by the federal program. The statutory language in the W.Va. Code §20-5E-6(a)(3) is the same as found in RCRA §3002. DNR regulations (§§6.01-6.05) are equivalent to regulations for generators at 40 CFR Part 262. Therefore, the State statutory and regulatory language for regulating generators are equivalent to and no less stringent than the federal statute and regulations.

The State Code, at §§20-5E-7(a) and 7(b), authorizes the Department of Highways and Public Service Commission to regulate transportation of hazardous wastes by rail (PSC) and over the highway (DOH). Regulations have been promulgated by both agencies and are in effect. See Volume II, Appendices IV and V. These regulations are equivalent to and no less stringent than the EPA regulations found at 40 CFR Part 263. In addition, the Division of Water Resources has equivalent and no less stringent authority for hazardous waste transportation over water and through air. See Volume II, Appendix II, §5.00.

The State has technical permitting standards that are equivalent to and no less stringent than the federal standards at 40 CFR Part 264. Section 20-5E-6(a)(4) of the State Code provides for the establishment of performance standards for treatment, storage and disposal (TSD) facilities. This section corresponds with the language found in RCRA §3004. The DNR, Air Pollution Control Commission APCC and Water Resources Board (WRB) have promulgated regulations or standards covering the same technical permitting standards found in the EPA regulations. All

permits issued by the State require compliance with standards in the same manner as those standards found under 40 CFR Part 271.12. In fact, the DNR, APCC and WRB regulations are more stringent than EPA regulations in effect on May 1, 1984 concerning liner requirements, the storage of hazardous wastes in uncovered tanks, and groundwater protection standards, as well as other issues.

EPA, however, has questioned the State's equivalency as it relates to requiring compliance with groundwater monitoring at TSD facilities. EPA's inquiry arises from the different effective dates of groundwater monitoring regulations. EPA's groundwater monitoring regulations were effective as of January 1983; while DNR's parallel regulations were effective as of May, 1983. The gap in effective dates may signify nonequivalency since a facility which was subject to EPA requirements could close before the effective date of the State's regulations and not be regulated by the State on this issue.

The State has inventoried all of its TSD facilities which are subject to groundwater monitoring and compiled a list of twenty-five (25) facilities. Appendix A. All of these facilities, except for two, are currently active and operating and thus subject to the State's groundwater monitoring requirements. The two facilities not currently operating are Airco Welding and Koppers-Collier. In the first instance, the State terminated interim status in 1984 has scheduled a draft closure permit for later this fiscal year. Airco, therefore, will close its facility under the State's analog to the EPA Part 264 closure standards. The State's standards are equivalent and no less stringent than EPA's Part 264 closure standards. In the second instance, the facility stopped receiving hazardous waste prior to the effective date for EPA groundwater monitoring requirements. The State has ordered it to comply with interim status standards.

All facilities that are required to receive RCRA permits under the federal program are required to be permitted under the State HWMP. In addition, those facilities without RCRA permits, but which qualify for federal interim status, are required by the State to comply with federal interim status standards under 40 CFR Part 265 until a permit is awarded. See W. Va. Code §20-5E-10.

Further, the transition program in West Virginia is equivalent to the RCRA interim status scheme. Therefore, no facility can qualify for interim status in the State unless it likewise does so at the federal level. Thus, state facilities must have been in existence on November 19, 1980 to qualify as an interim status facility. See Attorney General's Statement submitted with the interim authorization application.

Facilities that qualify for interim status may remain in operation until a final decision is made on their Part B permit application. Every hazardous waste facility in the State is required to receive a permit from the Chief of the Division of Water Resources. See W. Va. Code §20-5E-8(a). This section also requires hazardous waste management facilities to obtain all other permits required by law. Section 7 of Article 5E requires certain facilities to obtain permits in addition to that issued by the Chief. The West Virginia APCC, in Code §20-5E-7(f), issues permits to facilities that have air emissions.

The State's requirements for financial responsibility are also equivalent to and no less stringent than the federal standards of Subpart H of 40 CFR Parts 264 and 265. The State's required liability coverage for nonsudden accidental occurrences is found in §13.00 of the DNR regulations. Volume II, Appendix II. This section incorporates by reference Subpart H of 40 CFR Parts 264 and 265.

The State, upon receiving authorization for the HWMP, will require all new hazardous waste management facilities to contact the State and obtain an EPA identification number before commencing treatment, storage or disposal of hazardous wastes.

The procedural requirements for permit issuance in the State HWMP are also equivalent to and no less stringent than the federal requirements contained in 40 CFR 271.14. In particular, the State HWMP requires a forty-five (45) day comment period on draft permits, public notice of emergency permit issuance and the requirement to broadcast notice of proposed permit actions over local radio stations. See W. Va. Code §20-5E-9. In addition, the State program is more stringent than the federal program because it requires personal notification of all residents who reside within one quarter mile of the hazardous waste management facility.

The State HWMP does not contain any provisions for waivers of or variances to the requirements of the program. Section 11.15 of DNR regulations allows for schedules of compliance in hazardous waste management facility permits in a manner equivalent to and no less stringent than the federal program requirements at 40 CFR 270.33. An equivalent provision for compliance schedules in permits is available in Section 25.07 of the APCC regulations.

1.3.1 Consistency

The third standard requires the State program to be consistent with the federal program and approved RCRA programs in other states. West Virginia's HWMP meets EPA's consistency requirements. There are no provisions in the State HWMP that would cause inconsistencies with the requirements of 40 CFR 271.4 (a), (b) or (c). Indeed, §20-5E-22 of the State Code requires that the State HWMP be consistent with the federal program.

During the permitting of new major hazardous waste management facilities the State requires an environmental analysis in the permit application. See DNR Regs. §11.03. This more stringent program requirement does not violate EPA's consistency requirement because decisions relating to siting of new major hazardous waste management facilities are based on public health and environmental factors. See 40 CFR §271.4(b).

1.3.3 More Stringent Standards

The fourth standard addresses program elements that are more stringent than the federal program. West Virginia's HWMP is, in some areas, more comprehensive than the federal program of March 31, 1984. See e.g. Checklists attached to the Attorney General's Statement. However, those areas where more extensive regulatory requirements exist do not extend the scope of the State's program coverage beyond that of the federal program; rather the additional requirements should be viewed as within the federal scope of coverage for program delegation. More stringent program requirements include: additional public notice requirements for permitting; dual liner requirements; a zero degradation standard for groundwater protection; preparation of environmental analyses when permitting major new facilities; protection standards for uncovered storage tanks; availability of a citizen suit provision; disclosure in deeds and leases when conveying real property which was used for storage, treatment or disposal of hazardous waste; and other areas.

1.3.4 Adequate Enforcement

The fifth standard requires that the State have adequate enforcement provisions. The State HWMP enforcement provisions include a compliance evaluation program and mechanisms for the enforcement of program requirements. The program is more fully described in a separate section of this document. See Section 5. The state compliance evaluation and enforcement program complies with 40 CFR 271.15 and 271.16.

The compliance evaluation program contains procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other persons and for possible enforcement of failure to submit notices and reports.

The compliance evaluation program also includes inspection and surveillance capability to determine compliance (or non-compliance) with the program requirements. This process can be accomplished independently of information supplied by the regulated community.

State inspectors have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept, for the purpose of copying records, inspecting, monitoring or otherwise investigating compliance with the State HWMP, including compliance with permit conditions and other program requirements. See W. Va. Code §20-5E-12. Investigation and inspection procedures are conducted in a manner that will produce information that can be used as evidence in an enforcement proceeding or in court.

The State has several enforcement mechanisms for remedying violations of State HWMP requirements. Action may be taken by administrative order or by suit in State court to immediately restrain any person from engaging in any unauthorized activity which endangers or causes damage to public health or the environment. The State may also sue in court to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit; and may sue to recover civil penalties or prosecute for criminal violations. Fines and potential imprisonment are appropriate to the offense. See W. Va. Code §§20-5E-14 to 17.

The State provides for public participation in the enforcement process by allowing intervention as a right in any civil or administrative action, as well as, citizen suits consistent with RCRA §7002. The State HWMP also investigates and provides responses to citizen complaints.

1.3.5 Notice and Hearing in the Permit Process

The sixth standard stipulates that no state permit program may be authorized unless it meets the requirements found in RCRA §7004(b)(2). This section addresses the requirement for notices and hearings in the permitting process. The State complies with RCRA §7004(b)(2) by providing notice of its intent to take a permit action by publication of such notice in a major local newspaper of general circulation in the facility area and by broadcasting it over local radio stations. See W. Va. Code §20-5E-9, DNR Regulations §11.24.03, and APCC Regulations §19.12. Further, the State provides written notice to certain State and local government agencies and provides for at least a forty-five (45) day public comment period. In addition, the State may hold a public hearing if one is requested during the public comment period.

The State provisions, as given above, meet the requirements of RCRA §7004, as well as EPA regulations at 40 CFR 271.4.

PROGRAM OVERVIEW2.1 Scope

The State HWMP regulates all generators and transporters of hazardous waste, as well as all hazardous waste treatment, storage and disposal (TSD) facilities. The scope of regulation includes all federal facilities located in the State. There are no Indian lands within the State upon which to locate hazardous waste management facilities.

West Virginia has regulations for the purpose of establishing requirements for proper management of hazardous wastes. (See Volume II, Statutes and Regulations, Appendix II, III, IV, V and VI.) These regulatory requirements also establish the basis for State regulatory activities within the HWMP. The primary regulatory activities within the HWMP include:

- a. Monitoring and enforcing compliance with requirements placed upon generators and transporters of hazardous wastes;
- b. Permitting of TSD facilities upon review of appropriate application materials which indicate that proper treatment, storage and disposal will be performed;
- c. Monitoring compliance with technical and administrative requirements by on-site inspection of facilities and review of records;
- d. Enforcing the provisions of the regulations and law to remedy TSD facility non-compliance;
- e. Enforcing requirements for reporting of hazardous waste management activities by regulated units;
- f. Providing for appellate review of administrative actions (e.g., rulemaking, orders, or permits) taken by participating agencies;
- g. Providing adequate opportunity for public participation in actions taken by participating agencies; and,
- h. Monitoring and enforcing compliance with interim status requirements.

The State HWMP provides for regulation of hazardous waste management activities within the State in a manner

that reflects the policies established under RCRA Subtitle C. However, in some instances, the State has selected to require standards of performance or administrative methods which are either "more stringent" or additional to the federal requirements. The scope of State HWMP activities is as broad as that of the federal program.

2.2 Structure

The State's HWMP involves eight (8) state agencies which have authority over a component of the program. The Department of Natural Resources is designated as the "lead agency" pursuant to W. Va. Code §20-5E-4. The eight agencies which share program responsibility are listed in Table 2.1. The functions of the Health Department, Division of Oil and Gas and the Shallow Gas Review Board are beyond the scope of EPA's RCRA program and, therefore, are not discussed.

In general, the Department of Natural Resources is the lead agency with overall responsibility for program coordination and regulation promulgation. Further explanation of the Department's lead agency role is provided in Section III - Program Operation.

The other State HWMP agencies have either rulemaking, permitting, compliance evaluation, enforcement or appellate responsibility. In general, DNR's Division of Water Resources performs permitting, compliance evaluation and enforcement of requirements on generators of hazardous waste and owners and operators of treatment, storage and disposal facilities.

The Air Pollution Control Commission has jurisdiction over facility performance standards and treatment devices (e.g incinerators) regarding air emissions, and performs rulemaking, permitting, compliance evaluation, enforcement and appellate review for this program element.

Transportation is regulated by three (3) agencies. The Department of Highways promulgates rules and performs compliance enforcement on hazardous waste transported over the highways. DOH also performs inspections on generators who ship their hazardous waste off-site to determine compliance with applicable regulations. The Public Service Commission implements the hazardous waste transportation programs for rail shipment. The Department of Natural Resources has established regulations governing transportation of hazardous waste by air or water.

The State Water Resources Board (WRB) has rulemaking authority for discharges from hazardous waste management facilities but is also the principle appellate authority. The WRB establishes groundwater protection standards and hears appeals from any order or permit issued by the Chief of the Division of Water Resources.

Table 2.1
Structure of State's RCRA Hazardous Waste Management Program

AGENCY	PROGRAM ACTIVITY	REGULATION AUTHORITY (Statutory §/Description/ State Regs. §/EPA Regs.)	SCOPE OF AUTHORITY		
			PERMIT ISSUANCE	ENFORCEMENT	APPELLATE REVIEW
Department of Natural Resources	Lead Agency-overall program coordination and regulation promulgation.	W. Va. Code §20-5E-6: Identification and listing of hazardous waste. DNR Reg. §3.00. (40 CFR Part 261) Generator standards. DNR Reg. §6.00 (40 CFR Part 262) Facility standards, except for incinerators. DNR Regs. §§8.00, 12.00, 13.00 (40 CFR Part 264) Requirements for permitting. DNR Reg. §11.00 (40 CFR Parts 274, 124) Requirements for transporters of hazardous waste water and air. DNR §5.00. (40 CFR Part 263) W. Va. Code §20-5E-10: Requirements for interim status. DNR Reg. §8.01.06. (40 CFR Part 265)	None	None	None
DNR-Division of Water Resources	Permits issuance for TSDs* Compliance monitoring and evaluation of generators and TSDs* Enforcement Recordkeeping*	None**	Yes	Yes	None
Air Pollution Control Commission	Permitting, compliance evaluation enforcement of air pollution performance standards and incinerators.	W. Va. Code §20-5E-7(f): Air pollution performance standards and permit requirements; Facility standards for incinerators, APCC Reg. XXV (40 CFR Part 264 Subpart O)** Requirements for interim status APCC Reg. XXV, §25.03 (40 CFR Part 265)	Yes	Yes	Yes
Department of Highways	Ensuring compliance with requirements for transportation of hazardous waste on roads and on highways.	W. Va. Code §20-5E-7(a): transportation standards (40 CFR Part 262 and 263)**	None	Yes	No
Public Service Commission	Ensuring compliance with requirements for transportation of hazardous waste on railroads.	W. Va. Code §20-5E-7(b): transportation standards on railroads (40 CFR Part 263)**	None	Yes	No
Water Resources Board	Establishing standards for groundwater protection and water discharges from hazardous waste management facilities. Ruling on appeals from DWR orders and permits.	W. Va. Code §20-5E-7(i): standards governing discharges and permit requirements.	None	None	Yes
Department of Health	Enforcement of regulations pertaining to hazardous waste with infectious characteristics and the permitting of facilities which treat, store or dispose of such wastes.***	Regulations regarding hazardous waste with infectious characteristics.**	Yes	Yes	Yes
Office of Oil & Gas and Shallow Gas-well Review Board	Wells regulated under Chapter 22 of the Code***	Regulations regarding wells under Chapter 22 of the W. Va. Code**	Yes	Yes	Yes

*[except treatment by incineration (40 CFR Parts 264 and 265, Subpart O)]

**All agencies have authority to promulgate interpretive regulations under Chapter 29A of W. Va. Code even though no specific rulemaking authority is stated in the Code. These must be coordinated with DNR.

Each agency is responsible for day-to-day administration of its duties. Enforcement activities are performed by each agency under the authority of the Hazardous Waste Management Act with DNR being informed of the action for reporting to EPA. Legal services for the program are performed by the Attorney General's office.

2.3 Coverage

The State HWMP has statutory and regulatory provisions covering the following general categories of hazardous waste management activities:

- a. Classification of wastes as hazardous, via the provisions for identification and listing of hazardous wastes (See DNR Regulations §3.00);
- b. Notification of hazardous waste management activities (See DNR Regulations §4.00);
- c. Generation of hazardous wastes (See DNR Regulations §6.00);
- d. Transportation of hazardous wastes (See DNR Regulations §5.00, DOH and PSC regulations);
- e. TSD facility construction and operation (See DNR regulations §8.00 and 12.00, APCC Regulation XXV, and WRB regulations);
- f. Permitting of TSD facilities (See DNR Regulations §11.00, and APCC Regulation XXV), including public participation in facility permitting; and,
- g. Tracking of hazardous wastes from point of generation to final disposition via a manifest system (See DNR Regs. §6.00, PSC and DOH regulations).

2.3.1 Applicability of Program Elements

Hazardous waste classification is performed by DNR under Section 3.00 of its regulations. Hazardous waste classification applies to all generators and transporters of hazardous waste and to TSD facilities. Once a waste is designated as a listed or characteristic hazardous waste, it is a hazardous waste that must be handled in accordance with the State HWMP requirements unless expressly exempted by regulation or law.

The notification requirements of the State HWMP (See DNR Regulations §4.00) apply to all hazardous waste generators, transporters and TSD facilities, except certain handlers who beneficially use, reuse, recycle or reclaim their hazardous wastes.

Requirements placed upon generators of hazardous wastes (See DNR Regulations §6.00) apply only to those persons who generate more than 1000 kg of hazardous waste in any month. However, requirements have also been placed upon "small quantity generators." These requirements include notification of activity, on-site recordkeeping and restrictions on the type of off-site treatment, storage or disposal facility used.

The transportation program requirements, established by DNR, DOH and PSC, are applicable to all interstate, intrastate and international shipments of hazardous wastes by roadway, air, water or rail. The DNR requirements apply to air or water transportation. DOH requirements apply to roadway transport of hazardous wastes. PSC requirements apply to railway transportation. Notification, uniform manifest, packaging/labeling/markings, placarding, reporting and record-keeping requirements are placed upon transporters and those who offer hazardous waste for transportation off-site. In addition, the State HWMP has promulgated standards concerning discharges of hazardous wastes from transportation vehicles. (See e.g. DOH Regulations §6.00.)

TSD facility requirements are implemented by DNR and APCC. Incinerators and other hazardous waste management units which have air emissions are regulated by APCC. TSD facilities with other components must comply with DNR requirements. Additionally, DNR maintains purview over certain aspects of hazardous waste incinerators, such as contingency plans, ancillary storage or treatment facilities and financial assurance requirements. All facilities which treat, store or dispose of hazardous wastes are required to comply with the interim status standards at 40 CFR Part 265, the DNR requirements of §§8.00, 11.00 and 12.00 of their regulations, any applicable APCC requirements under Regulation XXV, and the WRB regulations where applicable.

2.3.2 Regulated Activities

The State contains, within its boundaries, the following numbers of regulated hazardous waste management activities (not including small quantity generators):

<u>Type of HWM Activities</u>	<u>Estimate No.</u>
Generators	64
Transporters	12
TSD Facilities	39

The 1982 State Hazardous Waste Management Survey indicated that in 1981 the quantities of hazardous wastes managed in West Virginia were as follows:

<u>Management Method</u>	<u>Estimated Amount</u>
Treatment	13.5 million tons/yr
Incineration	4,400 tons/yr
Disposal	168,000 tons/yr

2.4 Processes

This subsection is intended to provide an overview of the processes employed for the five basic State HWMP activities. The five State HWMP activities are as follows:

- Permitting of TSD facilities,
- Compliance evaluation,
- Enforcement,
- Public participation, and
- Appellate review.

The purpose of this section is to emphasize that each activity is a part of the overall program and describe the basic processes employed. Further details of the processes and procedures may be found in Sections 4 and 5 of the Program Description.

2.4.1. Permitting

State law and regulations require that the owner or operator (o/o) of any TSD facility obtain a permit prior to construction or operation of the facility. DNR, through its Division of Water Resources (DWR), and the APCC issues permits for TSD facilities. DOH and PSC have no permitting function in the State HWMP although transporters based in West Virginia are required to register. Permits are issued by DWR for TSD facilities. Permits for hazardous waste incineration systems and those TSD facilities that have air emissions are issued by APCC. A DWR permit is also required for incinerator facilities, however, which covers facility requirements unrelated to the APCC requirements (such as contingency planning, financial assurance and other items).

Administrative and technical review of a permit application and opportunity for public comment are provided prior to final permit actions. Permitting procedures employed by DWR and APCC are similar. Each agency's permitting process is briefly outlined here, with further details provided in Section 4.1.

TSD facility closure actions and post-closure permits are treated as permitting actions and subject to the processes described above.

Emergency permits are authorized by APCC and DNR regulations. They may be issued, with public notice and comment, under emergency conditions, either verbally or in writing. Justification documents are usually required in the form of an application. Verbal emergency permits must be followed by written authorization within five (5) days of the verbal approval.

The complexity and type of TSD facility governs the amount of time required for the permitting process and the types of review performed. Permitting of TSD facilities generally requires between nine (9) and thirty (30) months to complete. Storage facilities usually require the least permitting time; while land disposal facilities (especially landfills) require the most time to permit. Staff engineers (environmental, chemical and civil), geologists, chemists and administrators may become involved as part of a permit application review team, depending upon the type and complexity of the TSD facility.

2.4.2 Compliance Evaluation and Enforcement Process

The State HWMP includes a compliance evaluation and enforcement program which meets the requirements of RCRA Subtitle C. The process includes periodic inspections of generators, transporters and treatment, storage and disposal facilities consistent with 40 CFR §271.15, and 40 CFR §271.16, the State-EPA Enforcement Agreement and the Interim National Criteria for A Quality Hazardous Waste Management Program Under RCRA. This includes yearly inspection of all major facilities and major handlers of hazardous waste. Such periodic inspections determine compliance or non-compliance with issued permit conditions and other program requirements, including: standardized compliance evaluation inspection techniques and vehicular inspections for compliance with transporter requirements; reviews to verify information submitted by permittees and other regulated persons on reporting forms or other supplied information; inspection reviews to verify the adequacy of sampling, monitoring and other methods used by permittees and other regulated persons by methods such as split sampling and analysis; and review of groundwater monitoring plans.

Each of the agencies involved in the State's HWMP investigates information obtained regarding violations of applicable program and permit requirements and have

The permit process applies to both TSD facilities which currently operate under interim status and proposed new facilities. The DWR permit process is composed of nine (9) steps, which are as follows:

- Part B application request,
- Part B request inspection,
- Completeness check,
- Completeness determination,
- Technical review,
- Working draft permit,
- Draft permit,
- Public participation, and
- Final determination.

The permit process steps outlined above are used for facilities which operate under interim status, and which have filed a notification of activity and Part A application with DWR. Proposed new TSD facilities are required to file Parts A and B of the application simultaneously, before construction or operation of the facility. The Part B request is made to interim status facilities by certified letter, and allows six (6) months for receipt of the application. The Part B request inspection is performed within ninety (90) days of the date of the Part B request. The completeness check will result in a notification to the applicant whether the application is complete as well as; specifying deficiencies for incomplete applications. The working draft permit is circulated for internal review and sent to the applicant for his review prior to final draft permit formulation.

The APCC permitting process is very similar to the DWR process described above. The most significant differences between APCC and DWR permitting processes are: 1) DNR performs the Part B application requests; 2) APCC does not use a formalized working draft permit step; 3) trial-burns for existing incinerators must be completed and approved prior to issuance of the operating permit; and 4) APCC issues two (2) permits, one authorizing facility construction and one for operation.

The DWR permits and APCC operating permits are issued for a period not to exceed ten (10) years; the APCC construction permit is issued for the life of the facility. Permits issued under the State HWMP may be revoked for cause or modified as required. See Volume II, Appendix II and III. Each condition of a permit is enforceable without permit revocation.

procedures for receiving and ensuring proper consideration of information submitted by the public about violations. An example of the State's effort to encourage the reporting of violations by the public is contained in Appendix B.

Authority to inspect a facility, vehicle or any building, plant, premises or site in response to a complaint or for routine inspection is found in W. Va. Code §20-5E-12. Inspections are conducted, samples taken and information gathered in a manner which produces admissible evidence for enforcement proceedings.

Once a violation of the statute, permit, rule or order is detected, the agencies have several available enforcement tools. All of the State HWMP agencies have the same enforcement remedies under Article 5E. See W. Va. Code §20-5E-7. Thus, all State HWMP agencies may issue orders requiring compliance with either the law, regulations, their respective permits, or orders including cease and desist orders to restrain persons from engaging in any unauthorized activity which is either endangering or causing damage to the public health, safety or the environment. See W. Va. Code §§20-5E-14 and 17.

In addition, all State HWMP agencies have the ability to sue in appropriate court to enjoin threatened and actual damage to the public health or the environment as well as for levying civil penalties or criminal fines. The HWMP agencies have the ability to seek civil penalties appropriate to the violations consistent with 40 CFR §271.16. The State HWMP agencies have the ability to recover fines and penalties in the amounts required by 40 CFR §271.16. See W. Va. Code §20-5E-15 and 16.

2.4.3 Public Participation

Opportunities for public participation in the State HWMP activities are provided in four basic areas of the program. These areas are:

- Rulemaking,
- Permitting,
- Citizen suits and enforcement intervention,
and
- The State Freedom of Information Act.

The State Administrative Procedures Act, Chapter 29A of the State Code (See Volume II, Statutes and Regulations, Appendix VII), requires that opportunity

for public participation be provided in all administrative agency rulemaking. Public participation in rulemaking is provided by public notice of a proposed rule, a minimum thirty (30) day public comment period, and public hearing. A response to all comments must be compiled and filed with any final or proposed final rule. Additionally, any legislative regulation must also be reviewed and authorized by legislative action; this procedure provides additional opportunity for public review and input.

The permit actions proposed by DWR and APCC undergo public participation using a formal public participation procedure outlined in DNR and APCC program regulations. (See DNR Regulations, §11.24 and APCC Regulations §19.00.) These procedures include:

- Public notice via newspaper publication, radio broadcasts and direct mailings;
- Minimum forty-five (45) day public comment period;
- Agency response to all significant public comments; and
- Opportunity for public hearing if significant interest is expressed in the permit action.

DNR regulations also require all applicants to personally notify all residents within one-quarter mile of the facility location of the filing of an application for permit. This is accomplished by door-to-door notification, registered mailings or other approved methods.

The State Hazardous Waste Management Act at §20-5E-18 allows any person to commence civil actions against violators, if administrative actions are not taken by the State, or against an administrative agency for not performing a required duty (such as rulemaking). In addition, any person may petition for rulemaking under the Hazardous Waste Management Act, or intervene in any civil or administrative action as a matter of right. See W. Va. Code §§20-5E-18(c) and (g). These authorizations permit the public to participate in virtually all aspects of the State HWMP.

The State Freedom of Information Act (Chapter 29B, of the State Code) requires that all information kept by state agencies be made available to any person who requests it. See Volume 2, Statutes and Regulations, Appendix VIII. This provision of State law provides opportunity for the public to obtain information related to any facet of the State HWMP. Exemptions to

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this requirement are very few. However, information that is confidential (and certified as such) or sensitive enforcement information may be withheld.

In addition to the four(4) mechanisms described above, the State supports a Hazardous Waste Advisory Committee (HWAC). The HWAC is composed of representatives from the regulated community (industrial facilities and transporters), representatives of environmental organizations and public "watchdog" groups as well as representatives from governmental agencies. Its role is to advise the Department on matters relating to the hazardous waste program.

2.4.4 Appellate Process

The State HWMP offers several appellate procedures for appealing rules, orders and permits. First, any permit issued by the Division of Water Resources may be appealed to the Water Resources Board by "any person adversely affected or aggrieved.", W. Va. Code §20-5E-19. Secondly, orders and permits issued by the Director of the Air Pollution Control Commission are appealable to the full Commission pursuant to W. Va. Code §§20-5E-7(f) and 16-20-6.

Rules are appealable to the Circuit Court of Kanawha County under the State's Administrative Procedures Act W. Va. Code §29-1-1 et. seq.

PROGRAM OPERATION

3.1 Organization and Structure of State Agencies

Of the eight agencies involved in the State's HWMP only six have responsibility for activities under EPA's RCRA Hazardous Waste program. See Table 2.1. The Department of Natural Resources (DNR) is the lead agency and primary rulemaking body. The Division of Water Resources, which is a part of DNR, has permitting and enforcement authority for generators, transporters by air and water and for TSD facilities other than incinerators. The Air Pollution Control Commission has responsibility for rulemaking, permitting and enforcement of incinerator performance standards and air emissions from TSD facilities.

The Department of Highways and the West Virginia Public Service Commission regulate transporters over the highways and railroads respectively. The Water Resources Board has appellate responsibilities (See Section 2.4.4.) and promulgates regulations for groundwater protection.

3.1.1. Department of Natural Resources and Division of Water Resources

The Department's organizational chart is shown at Figure 3.1. The Department consists of an Administrative section consisting of the Director, Deputy Directors and support personnel as well as six (6) Divisions including the Division of Water Resources. The HWMP is coordinated from the Director's office. The Administrative Section is responsible for rule-making.

The Division of Water Resources houses the Solid and Hazardous Waste/Groundwater Branch which contains the Division's hazardous waste program. The Branch, with respect to its hazardous waste activities, is divided into four major sections: Administration, Permits Section, Compliance Assurance Section, and Enforcement Section. Figures 3.2. and 3.3. are organizational charts for the Division and the Branch respectively. Two other Division Branches, Field Operation and Monitoring, support the Solid and Hazardous Waste/Ground Water Branch by looking for non-compliance with the hazardous waste management requirements when conducting field investigations of facilities within their jurisdiction.

3.1.2 Air Pollution Control Commission

The West Virginia APCC is the State's regulatory

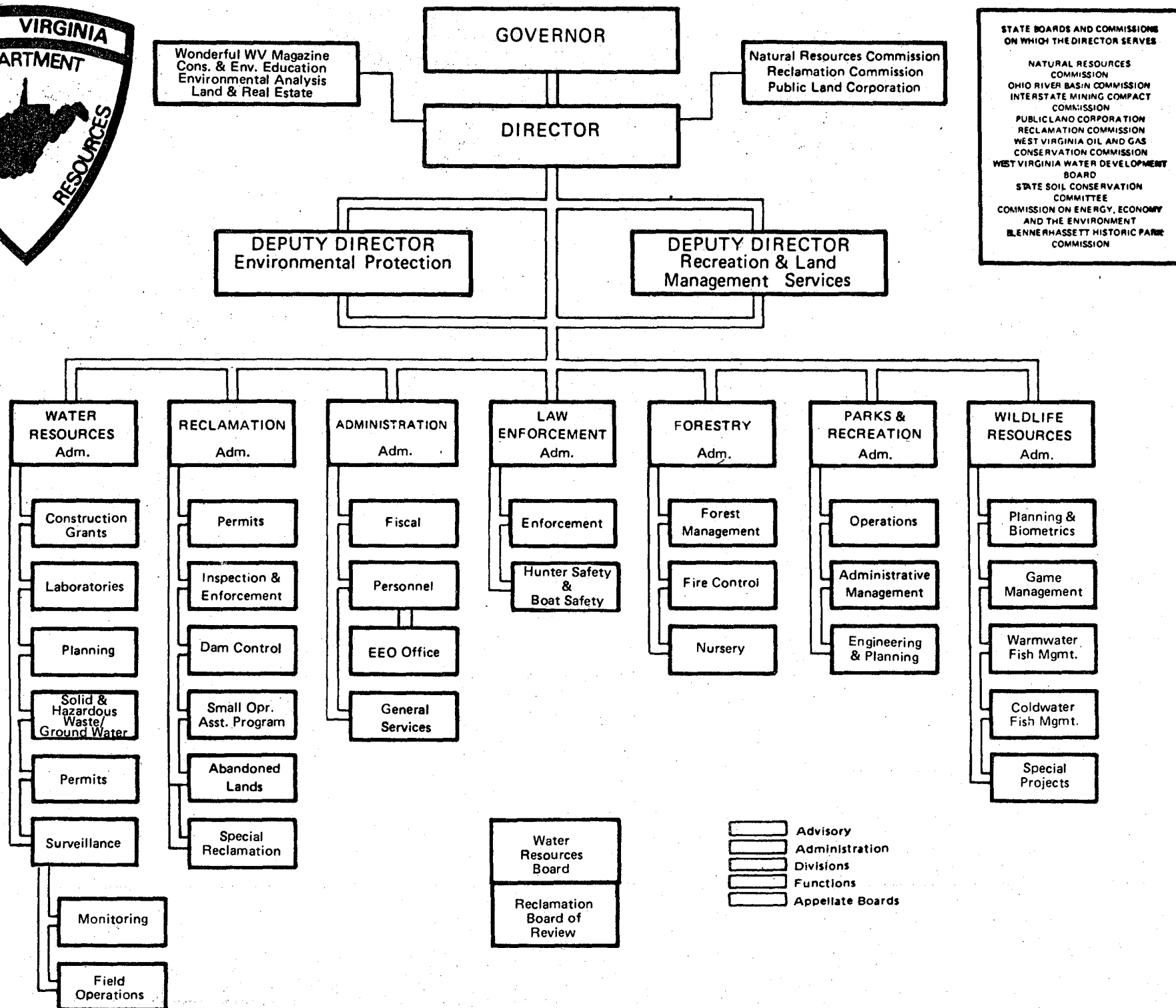


Figure 3.1
DNR ORGANIZATIONAL CHART

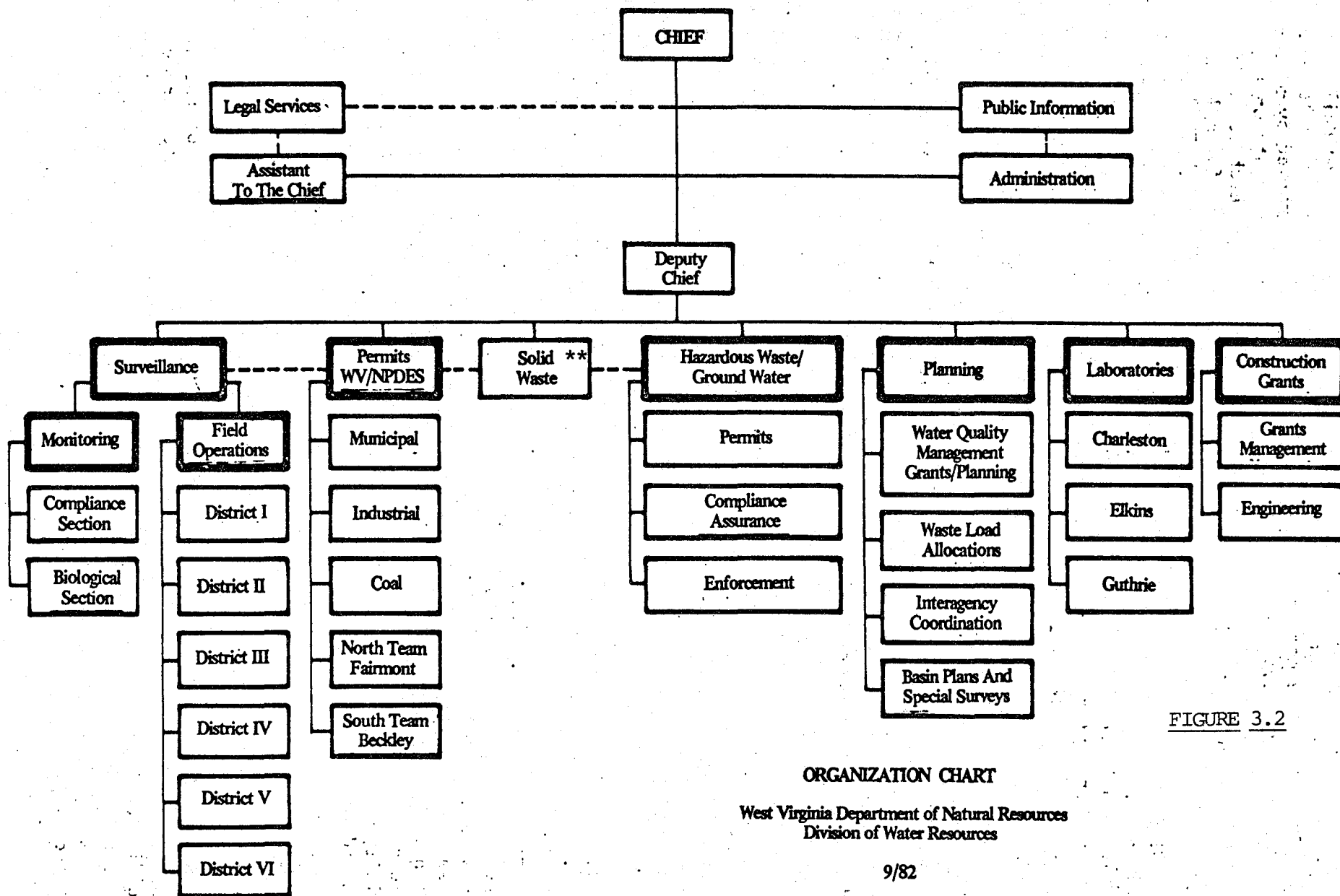


FIGURE 3.2

ORGANIZATION CHART

West Virginia Department of Natural Resources
Division of Water Resources

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**The Solid Waste Office merged with the Hazardous Waste/Ground Water Branch in July 1984.

agency for preventing air pollution and protecting air quality as well as having jurisdiction and responsibility over air emissions from hazardous waste facilities. The APCC has established a Hazardous Waste Division which reports to the Director of the Commission. Figure 3.4 provides the organizational structure of the APCC.

3.1.3. Department of Highways

The West Virginia Department of Highways has broad statewide responsibilities for highway construction and safety. The Department of Highways hazardous wastes program is administered by the Assistant Director/State Safety Officer of the Highways Services Division. The Department has established a Hazardous Waste Section within the Division. A DOH organizational chart will be provided as soon as it is available (Figure 3.5).

3.1.4. West Virginia Public Service Commission

The West Virginia Public Service Commission (PSC) is the state's agency charged with responsibility of regulating public utilities. As such it regulates rates, charges and service reliability for the telephone, electric, gas, water and sewer utilities. It is also the State agency which regulates motor carriers and railroad transportation safety. The hazardous waste program for railway transportation is administered by the Director of the Railway Safety Division. Figure 3.6 shows the organizational structure for the Public Service Commission.

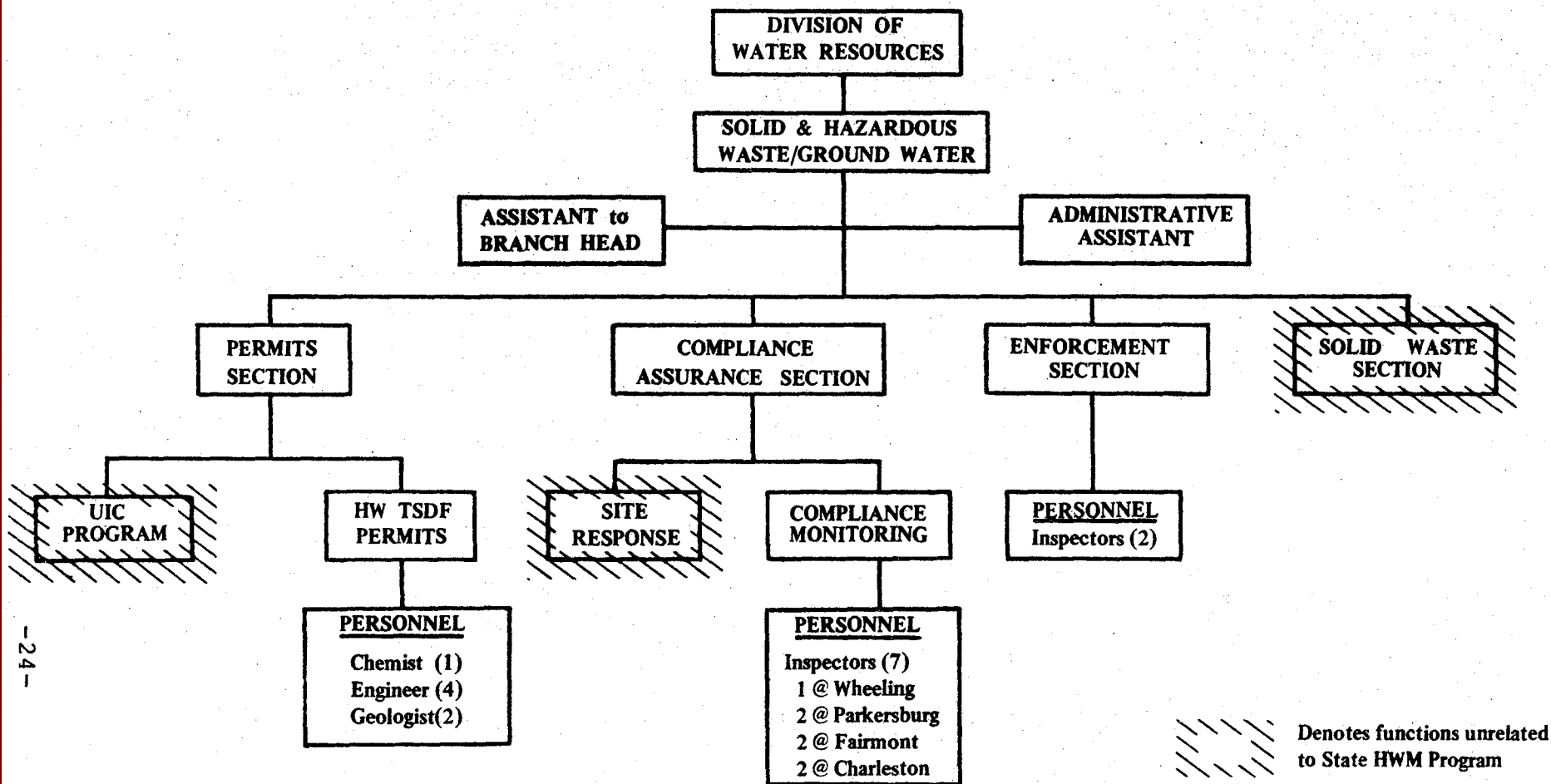
3.1.5. Water Resources Board

The Water Resources Board is a part-time board which has rulemaking and appellate review authority for both the State's Water Pollution Control Act/NPDES and hazardous waste programs. The Board consists of five members and has a staff consisting of secretary, legal counsel and staff scientist. Due to their appellate role in the State's NPDES program, members of the Board must meet the conflict of interest requirements of 40 CFR §123.25(c). See West Virginia Code §20-5-3; Volume II, Appendix IX.

3.2 Agency Responsibilities

3.2.1. Division of Water Resources

The Division of Water Resources has responsibility for implementing and enforcing its program components as detailed in Table 2.1 as well as those functions



NOTES:

All sections are supervised by a Section Leader and have a secretary.

Figure 3.3

ORGANIZATION CHART SOLID & HAZARDOUS WASTE/GROUND WATER BRANCH

▷DIVISION OF WATER RESOURCES◁

▷DEPARTMENT OF NATURAL RESOURCES◁

Section
Permits
Compliance Assurance
Enforcement

Section Leader Classification
Engineer
Natural Resources Admin.
Water Resources Supervisor

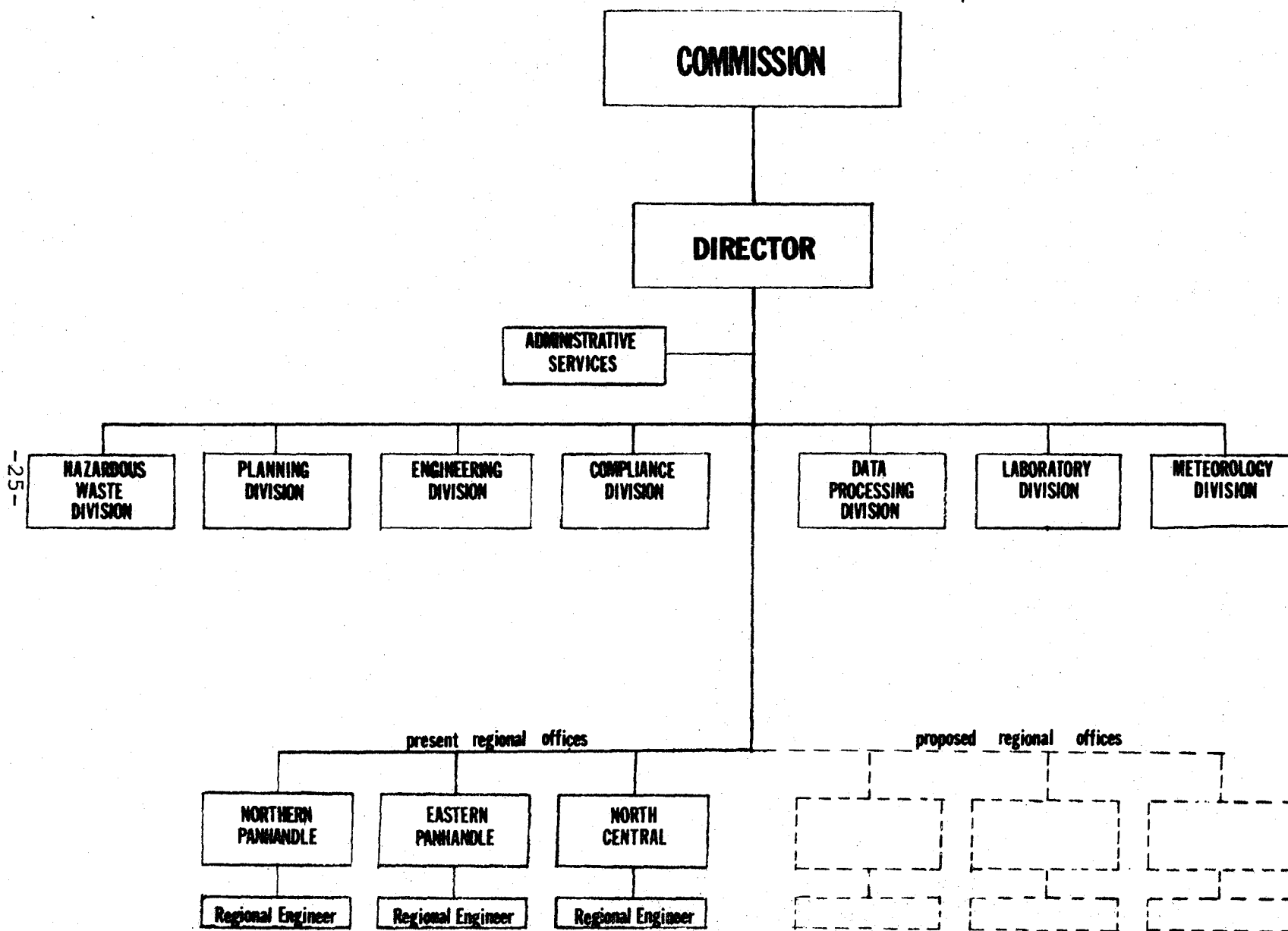


FIGURE 3.4

ORGANIZATION CHART -- PUBLIC SERVICE COMMISSION

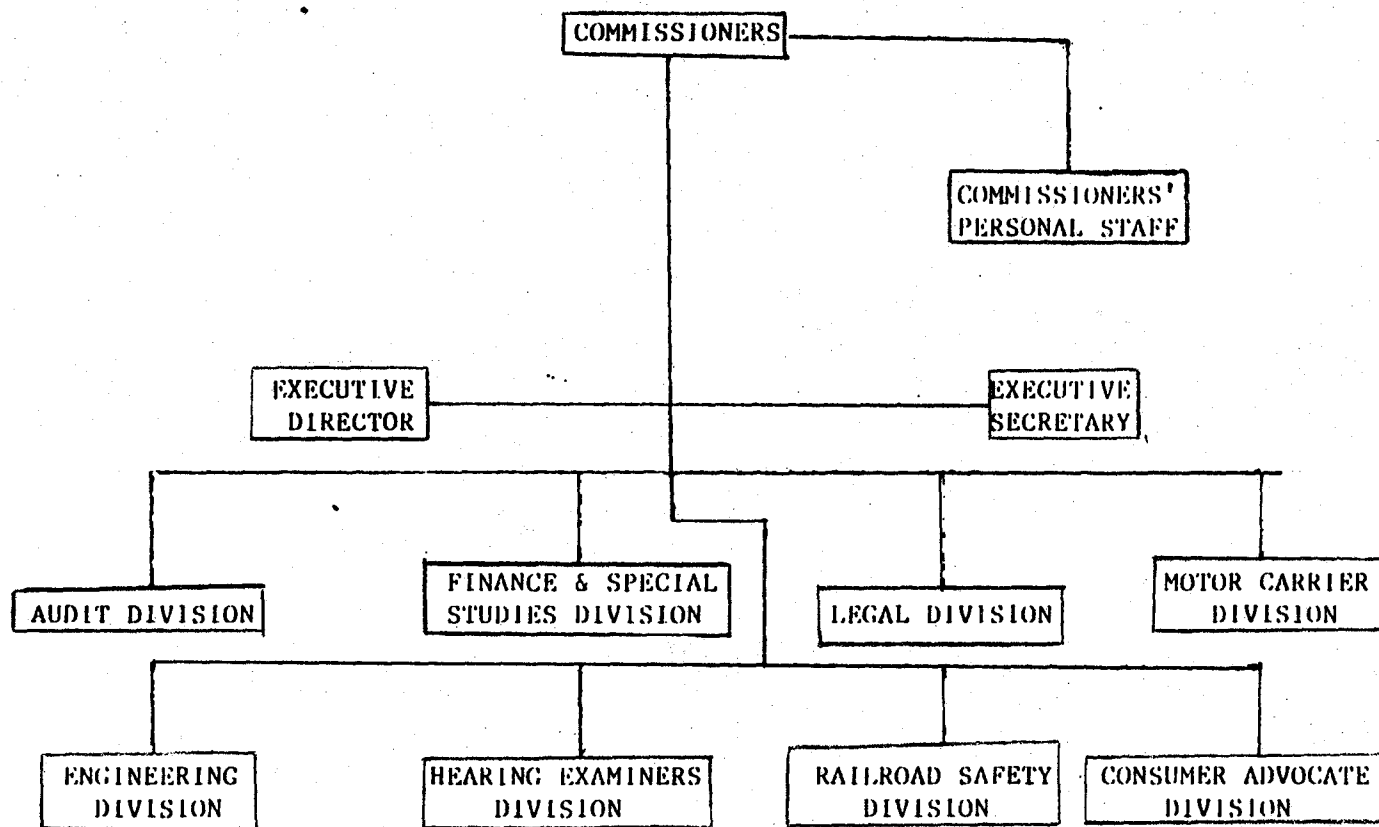


FIGURE 3.6

assigned to it by the EPA/State Memorandum of Agreements (MOA) and State interagency agreements, Memorandums of Understanding (MOU).

The DWR has statewide jurisdiction over each class of activities. In addition to implementing these functions the Division also makes recommendations on the identification and listing of hazardous waste to the Director, recommends standards for groundwater protection to the Water Resources Board, compiles monthly activity reports for transmittal to EPA, develops permitting and enforcement strategies for recommendation to the Director and coordination with other agencies, administers and disburses EPA grant funds to other agencies and performs other duties as assigned by either the Director, the State-EPA Memorandum of Agreement (MOA) or by any of the Memoranda of Understanding (MOA) with other State HWMP agencies. See Section 3.3.2 and Appendices C and D.

3.2.2 Air Pollution Control Commission

The APCC performs those functions listed in Table 2.1 as well as those functions assigned to it by the MOA and MOU. The class of activities regulated by the APCC for the EPA approved program is treatment by incineration. The APCC has statewide jurisdiction over this activity.

3.2.3. Department of Highways

The DOH performs those functions listed in Table 2.1 as well as those functions assigned to it by the MOA and MOU. The class of activities regulated by the DOH is transportation over the State's highways. The DOH has statewide jurisdiction over this activity.

3.2.4. Public Service Commission

The PSC performs those functions listed in Table 2.1 as well as those functions assigned to it under the MOA and MOU. The PSC has statewide jurisdiction over hazardous waste transportation by rail.

3.3 Lead Agency

3.3.1 Role/Relationship

The Department of Natural Resources is the lead agency for the Hazardous Waste Management Program with overall responsibility for promulgation of West Virginia's hazardous waste management rules and regulations. The director is charged with the responsibility

of ensuring that the administration and enforcement of the Act are integrated with the appropriate provisions of the other State laws and that duplication is avoided.

The Director has appointed a State Hazardous Waste Coordinator to perform these tasks, perform oversight and be the focal point for contact with EPA, the regulated community and general public.

3.3.2 Coordination

Each agency coordinates their hazardous waste activities with the lead agency as well as with the other state HWMP agencies as necessary. State inter-agency coordination involves scheduling of joint inspections, discussions on establishing standards so as to avoid duplication, resolution of any discrepancies in program operation that may arise, coordination of public participation activities, and coordination of enforcement activities.

The Department of Natural Resources has entered into a Memorandum of Understanding with the Air Pollution Control Commission (Appendix C) and the Department of Highways (Appendix D) pertaining to coordination of the hazardous waste program. The Department of Natural Resources is the agency that the other state agencies and EPA contact when an issue concerns one or more of the State agencies that have signed the MOA or when it is unclear which state agency should be contacted concerning a particular matter or issue.

The Department's lead agency responsibilities include contact between the State and EPA. Coordination efforts at this level serve to inform the State agencies of EPA regulatory changes as well as changes in program guidelines and program elements that may have an impact or effect State program operations. The State Hazardous Waste Coordinator (SHWC), monitors the coordination process and performs coordination functions including: acting as the focal point for US EPA contact; serving as a clearinghouse for information concerning USEPA requirements; coordinating overall State program milestones; performing the duty of informing EPA of the State's overall program status and progress. In addition, the SHWC coordinates State action necessary to secure federal funds and oversees subsequent distribution of those funds to the State agencies involved in the hazardous waste program. The SHWC also coordinates matters relating to hazardous waste management with other states.

3.4 Staffing

The six State agencies that administer the State HWMP are DNR, DNR-DWR, APCC, DOH, PSC and WRB. Each agency has personnel designated to participate in the State HWMP. Each agency's staff is managed by that agency, and the program is coordinated by DNR in its role as lead agency. The following description of the HWMP staffing is subdivided by agency.

3.4.1. DNR/DWR Staffing

The DWR portion of the State HWMP is located in the Solid & Hazardous Waste/Groundwater Branch of the Division of Water Resources. The Branch is subdivided into four sections: (1) Permits, (2) Solid Waste, (3) Compliance Assurance, and (4) Enforcement. The Solid Waste Section and portions of the staff of the Permits and Compliance Assurance Section have no duties under the State HWMP, other than those related to coordination of activities.

The Branch has a total authorized staff of thirty-three (33) people. Twenty-two (22) of the Branch staff participate in the HWMP directly. The breakdown of Branch staff is given in Table 3.4.1.

TABLE 3.4.1

BREAKDOWN OF STAFFING SOLID & HAZARDOUS WASTE/GROUNDWATER BRANCH

Number in Position	Position	Description of Duties
1	Branch Head	Management, program development, policy and administration.
1	Asst. to Branch Head	Program development, special assignments, policy review and branch technical and management assistance.
1	Administrative Assistant	Administration, program development, etc.
1	Permits Section Leader (Engr.)	Management of HW TSDF permit program, technical asst., and permit program development.

TABLE 3.4.1 (continued)

BREAKDOWN OF STAFFING
SOLID & HAZARDOUS WASTE/GROUNDWATER BRANCH

Number in Position	Position	Description of Duties
4	Permit Engineer	Technical & administrative review of TSDF permit applications, technical review of GWM plans/results, technical assistance to other HWMP sections.
2	Permit Geologist	Hydrogeologic and administrative review of TSDF permit applications, geologic/hydrogeologic assistance to staff engineers and other HWMP staff.
1	Permits Chemist	HW listings review, application review, chemistry assistant to other Branch staff.
1	Enforcement Section Leader	Management of enforcement actions, enforcement policy review, and assistance to other Branch staff.
2	Enforcement Inspectors	Enforcement case development, liaison with AG, field and file enforcement investigation, enforcement case tracking.
1	Compliance Assurance Section Leader	Management of field investigative force, tracking and scheduling inspections, sampling QA, compliance evaluation, program development.
7	Inspectors	CEIs, sampling, inspection reporting, complaint and violation investigation, assistance on field permit application review.
3	Secretaries	Clerical

The Permits Section of the Branch contains the largest technical staff devoted to the program. The primary duties of the Permits Section staff are review and evaluation of TSD facility permit applications, preparation of draft and final permits, evaluation and recommendations related to TSD facility closure and post-closure applications, and technical advice concerning regulations, enforcement and compliance evaluation. Additionally, the Permits Section staff review technical data related to treatment, storage and disposal of hazardous wastes for the purpose of maintaining the technical skill of the agency. The Permits Section is composed of four (4) staff engineers (environmental, chemical and civil), two (2) geologist, one (1) chemist, and a Section Leader (administrator).

The Compliance Assurance Section staff consists of a Section Leader (geologist/administrator) and seven (7) inspectors. The Section responsibilities include performing CEIs, sampling of wastes and processes, and conducting field review of TSD permit applications. The CEIs are performed for generators, transporters and TSD facilities for which DNR has administrative responsibility.

The Enforcement Section consists of a Section Leader (Administrator) and two (2) enforcement inspectors. These persons are responsible for initiating coordination, case-development tracking and follow-up on DNR enforcement actions. They also operate the DNR/HWMP Small Generator and Facility Assistance Program (SGFAP).

The Branch is assisted in fulfilling its HWMP responsibilities by several persons outside the Branch. They include a Public Information Representative, a laboratory chemist and an Assistant Attorney General. Additionally, the Branch provides three (3) secretaries to perform clerical duties necessary to the program.

Two other Branches of DNR also provide input to the HWMP, but have no designated role or responsibilities. These Branches are Field Operations and Monitoring; each is a field-inspection force of DNR. It maintains six (6) district offices and thirty-five inspectors throughout the State. Their main role in the HWMP is to assist in maining field sampling efforts and conducting HW inspections, when requested. They also initiate complaint investigations. The Monitoring Branch has ten (10) inspectors who primarily conduct monitoring and sampling inspections of NPDES facilities. Their main contribution to the HWMP is assistance with sampling efforts, especially of unpermitted waste discharges. DNR also supports the State Hazardous Waste Coordinator as well as providing administrative services and guidance from the Director's Office.

3.4.2. APCC Staffing

APCC has a designated Hazardous Waste Division as described in Section 3.2.2. This division is staffed by a Chief and two (2) engineers. The Division Chief's duties include supervision of division activities, TSD facility permit application processing and review, and compliance testing and assessment. He also assists in budget preparation, grant requests and coordination of APCC activities with other participating agencies.

The Staff engineers in the APCC Hazardous Waste Division conduct compliance inspections, complaint investigations, violation investigations and TSD facility permit application review.

Legal counsel, for APCC HWMP responsibilities, is employed on a part time basis. Clerical, laboratory and administrative support for the APCC Hazardous Waste Division are drawn from other APCC divisions.

3.4.3. DOH Staffing

The DOH portion of the State HWMP is located in the Highway Services Division of DOH as described above. An Assistant Director/State Safety Officer of the Highway Services Division has responsibility for administering DOH/HWMP responsibilities, in addition to three (3) other Division programs. The DOH/Highway Service Division has developed a Hazardous Waste Section. The staffing and duties of this Hazardous Waste Section are shown in Table 3.4.3.

TABLE 3.4.3

Department of Highways Staffing Hazardous Waste Section

<u>Position</u>	<u>No. of FTEs</u>	<u>Duties</u>
Assistant Division Director (1)	0.33	DOH-HWMP Management
State Safety Officer (1)	1.00	Training, compliance review
Regional Safety Inspectors (3)	1.00	Transportation and vehicular inspection
Stenographer (1)	0.25	Clerical
Overtime	.06	Staff
Six Persons	2.64 FTEs	

3.4.4. PSC Staffing

PSC responsibility, in the State HWMP, is the regulation of railroad transport of hazardous wastes. The PSC Railway Safety Division, which performs the State HWMP functions has a staff consisting of four (4) track inspectors and four (4) car inspectors. The duties of these inspectors is to inspect railroad transport vehicles and track to ensure against accidental releases of hazardous materials, inadequate manifesting of wastes and inadequate placarding, packaging and vehicular containment. Enforcement of PSC regulations concerning railway transport of hazardous wastes is also performed by these inspectors. The Division estimates that it provides the equivalent of 0.5 full-time persons to the HWMP.

3.4.5 Water Resources Board Staffing

The State Water Resources Board is a part-time Board consisting of five (5) members appointed by the Governor. To assist in performing its duties, the Board employs a staff scientist, legal counsel and an administrative assistant.

3.4.6. Staffing Summary

A summary, by position, of the State HWMP is given in Table 3.4.6.

TABLE 3.4.6

Summary of Staffing*

Position	DWR	APCC	Number of FTEs		TOTAL
			DOH	PSC	
Administrative	4.5	0.5	0.33		5.33
Legal	1.0				1.0
Clerical	2.5		0.25		2.75
Engineering	4.0	2.5			6.5
Inspection/ Enforcement	7.5		2.5	0.5	10.0
Geologist	2.0				2.0
Other	2.5		0.06		2.56
Total	24.0	3.0	2.64	0.5	30.14

*WRB FTE's are not susceptible to reliable estimates.

3.5 Costs and Funding of State HWMP

This subsection describes the current and projected State HWMP cost and funding, and anticipated sources of funding. Funding and cost estimates are based upon past experience during operation of program activities under interim authorization. Projected funding and cost estimates are provided for Federal FY 1986 and 1987.

3.5.1. Current and Projected HWMP Costs

Current and projected HWMP costs are provided on Table 3.5.1. This estimated total costs for implementing the authorized program, to which this program description applies, are \$1,054,300 for FY 1985, \$1,426,000 for FY 1986, and \$1,559,500 for FY 1987. The costs given in Table 3.5.1 are subdivided by participating agency and general budget line items. Costs for hearings and appeals before the Water Resources Board are not estimated, but will be approximately \$1,300 to \$1,900 per day of hearing.

The cost estimates for FY 1986 and 1987 reflect a need for increased program resources. They do not reflect increases anticipated due to revisions or changes in the Federal program resulting from the Hazardous Waste and Solid Waste Amendments of 1984. The State anticipates significantly increased future costs due to the 1984 Amendments.

The cost estimates illustrate that the majority of the State HWMP resides with DNR, with significant effort supplied by APCC, DOH and the PSC.

3.5.2 Funding Estimates

Table 3.5.2 identifies estimated program funding, by funding source, for Federal FY 1985 through 1987. Federal grant funds under RCRA Section 3011 are estimated to be \$790,000 for FY 1985, \$1,069,500 for FY 1986, and \$1,170,000 for FY 1987. They are matched with state funds in the proportion of 75% federal and 25% state funds.

The state funding is derived from the State Hazardous Waste Management Fund, and from legislative appropriations to the participating agencies. The Hazardous Waste Management Fund is comprised of permit application fees and net proceeds of penalties and forfeitures. There are no limitations or restrictions on use of the funds from any of these sources to implement and administer the HWMP.

Cost increases alluded to above have been projected as being equally shared by Federal grant funds and state funds, since the State is unable to predict FY 1986 and 1987 Federal funding availability.

TABLE 3.5.1
ESTIMATED STATE HWM PROGRAM COSTS*
FEDERAL FY 1985 through 1987

AGENCY**	CURRENT EXPENSES	PERSONAL SERVICES	REPAIRS & ALTERATIONS	EQUIPMENT	TOTAL
<u>Y 1985</u>					
NR	\$ 169,300	\$ 542,000	\$ 30,000	\$ 105,300	\$ 846,600
PCC	11,800	75,700			87,500
OH	14,300	80,000		12,000	107,700
SC		12,500	1,400		12,500
otal	\$ 195,400	\$ 710,200	\$ 31,000	\$ 118,300	\$1,054,300
<u>Y 1986</u>					
NR	\$ 244,000	\$ 767,000	\$ 41,000	\$ 169,000	\$1,221,000
PCC	12,000	80,000	1,000		93,000
OH	15,000	80,000	2,000		97,000
SC		15,000			15,000
otal	\$ 271,000	\$ 942,000	\$ 44,000	\$ 169,000	\$1,426,000
<u>Y 1987</u>					
NR	\$ 291,000	\$ 854,500	\$ 48,000	\$ 126,500	\$1,320,000
PCC	20,000	88,000	3,000		111,000
OH	20,000	88,000	3,000		111,000
SC		17,500			17,500
otal	\$ 333,000	\$1,048,000	\$ 54,000	\$ 126,500	\$1,559,500

*These estimated costs are for the federally authorized program as of May 1, 1984. The State's HWMP costs will be higher due to the recent federal Hazardous and Solid Waste Amendments of 1984.

*WRB Cost estimates are not included; however, each hearing day costs between \$1,300-1,900/day depending on the number of Board members present.

TABLE 3.5.2
PROGRAM FUNDING ESTIMATES
FY 1985 - 1987

FUNDING SOURCE	ESTIMATED FUNDING (\$)		
	FY 1985	FY 1986	FY 1987
RCRA 3011 Grant	\$ 790,700*	\$1,069,500	1,170,000
State General Revenues			
(1) HWM Fund	35,000	100,000	100,000
(2) Other General Revenue	228,600	256,500	290,000
TOTAL	\$1,054,300	\$1,426,000	\$1,560,000

*Does not include potential authorization bonuses.

STATE PROCEDURES

This section of the Program Description describes the procedures and processes employed in the State HWMP for permitting TSD facilities and program revisions.

4.1 TSD Facility Permitting

Under the West Virginia Hazardous Waste Management Act, "No person may own, construct, modify, operate or close any facility or site for the treatment, storage or disposal of hazardous waste" or treat, store or dispose of hazardous waste without first obtaining a permit from the Chief for such facility. W. Va. State Code §20-5E-8(a). DNR's permit covers all regulated components of TSD facilities except those which are subject to the technical and permitting requirements of the APCC (those TSD facilities that have air emissions). The HWMA requires persons to also obtain "all other permits as required by law." Id.

New TSD facilities may not be constructed or operated until both Parts A and B of the permit application have been submitted and a permit has been granted. Existing facilities were required to submit Part A's to DNR within thirty (30) days of the effective date of DNR's regulations. Existing thermal treatment facilities and other treatment or disposal facilities which discharge or may discharge hazardous wastes to the air were required to submit Part A's to the APCC within sixty (60) days of the effective date of their regulations. Part B Applications for all existing incinerators are currently under review by DNR and APCC.

Permitting requirements are promulgated in Section 11 of the DNR regulations and Sections 13 through 23 of APCC regulations. The application filing, review and public participation procedures employed by DNR and APCC are generally the same. This section describes those procedures for filing a permit application, application review, and differences between DNR and APCC permitting procedures, where they exist.

Permitting procedures are utilized by DNR and APCC for authorizing construction/operation of new and existing TSD facilities, as well as modification, revocation or reissuance of a TSD facility permit. DNR is responsible for approving closure of TSD facilities and providing post-closure authorizations.

4.1.1 Permit Application

The application for a permit to construct or operate a TSD facility is, generally, composed of Parts

A and B. This includes supporting plans, specifications, drawings and schedules, and the applicable application fee. Existing TSD facilities are required to have their Part A application on file with DNR and/or APCC to obtain interim status authorization. New TSD facilities are required to file Parts A and B of the application concurrently. Part A information may be submitted using either the EPA Part A form or any other form that provides the information required in Section 11.04 of the DNR Regulations. Part B of the application must contain all information required in the applicable regulations of DNR and/or APCC and their Part B application formats. (See Volume 2, Statutes and Regulations, Appendix II and III, DNR Regulations Section 11.05.01, and APCC Regulations Section 15).

Application fees are required by DNR regulation Section 11.02.08 and APCC regulations Section 28. Application fees are required to be filed with Part B of the application.

DNR and APCC have the authority to require information which will support the application at any time prior to a final action on the application. That is, they may require submission of additional information that will explain or confirm assertions or information provided in the Part A or B application or any supporting document.

The permit application for any new major TSD facility must include an environmental analysis, pursuant to DNR Regulations Section 11.05.03. A major TSD facility is a treatment or disposal facility with 1000 ton/year throughput capacity, or any storage facility with a storage capacity of 1000 tons of hazardous waste. The required environmental analysis must provide sufficient information to allow assessment of environmental, technical and economic factors related to operation of the TSD facility. Permitting of a facility is contingent upon assurance that public health and environment will be protected from negative impact during and after facility operation.

The permit application must also demonstrate that the TSD facility will be properly closed, that the effects of the facility will be monitored after its closure (for land disposal facilities) and that the owner/operator of the facility is financially capable of properly closing and monitoring facility effects after closure. Additionally, when an existing facility is already affecting the environment (e.g., groundwater is contaminated beneath the facility), the owner/oper-

tor will be required to propose a plan and schedule, for inclusion in the permit or closure plan, for corrective actions at the facility.

4.1.2 State Permitting Process

The owner/operator of a hazardous waste TSD facility is required to obtain a permit prior to construction or operation of the facility. DNR's Division of Water Resources may issue permits for treatment, storage and disposal facilities. Permits for hazardous waste incineration systems and other TSD facilities that have air emissions are issued by APCC. TSD facilities for which APCC issues permits are also required to obtain a DWR permit. The DWR permit covers contingency and safety training plans, financial assurance and other requirements established and administered by DNR.

Administrative and technical review and public comment are required prior to a final permit action by both DNR or APCC. Procedures used by APCC and DNR are very similar. The differences in permitting procedures, between DNR and APCC, are also described in this subsection.

The DNR permitting process applies to TSD facilities which currently exist and operate under interim status and to those which are proposed. The permitting process consists of eight (8) steps. These steps are:

- (1) Part B Application Request - This step applies only to TSD facilities for which a Part A application is on file with DNR or APCC, and which have been given interim status. DWR requests, by letter, that the TSD facility o/o file a Part B application within six (6) months of receipt of the request letter. Failure to submit the Part B application may result in termination of interim status.
- (2) Part B Request Inspection - DWR personnel inspect the subject TSD facility within ninety (90) days of the date of the Part B request letter. These inspections are performed by the inspector normally assigned to the facility and the "lead" permit application reviewer. Inspections are intended to provide the permit-writers with a firsthand view of the facility, and to begin transferring field-related information to the permitting process.
- (3) Completeness Review - Upon receipt of a Part B application, or both application parts in the case

of a new facility, DWR reviews it for administrative completeness. This review focuses on whether the application contains all elements required by law or regulation, and only cursory review for technical soundness of each element. The applicant is notified of the outcome of the completeness review, by letter, within ninety (90) days of DWR receipt of the application. The ninety-day completeness review period is required for new facility applications, but DWR uses this period for all Part B applications. Owner/operators of facilities for which an incomplete application is received are sent a letter (Notice of Deficiency) which describes those areas of the application which are deficient and what additional information is necessary.

- (4) Technical Review - The permit application is reviewed to assure that the technical performance standards of Sections 8 and 12, and administrative standards of Sections 11 and 13, of DNR regulations are fulfilled (the APCC, of course, reviews applications for compliance with its standards of performance). Technical application review may continue for an application even though portions of the application may be incomplete. During this period the applicant has an opportunity to complete the application information.
- (5) Working Draft Permit - Technical review continues until a working draft permit is prepared by DWR. This draft of the permit action is circulated for internal review and a copy is transmitted to the applicant and EPA for comments. This stage of the permitting process is intended to yield a draft permit action with accurate and defensible terms and conditions, and is the precursor to the draft permit action upon which public comments is solicited.
- (6) Draft Permit - A draft permit is formulated in preparation for public participation and final action on the application. The draft permit contains all elements of the final action proposed by DWR or APCC (e.g., terms, conditions, expiration dates, schedules of compliance, etc).
- (7) Public Participation - A forty-five (45) day public comment period ensues wherein the public may submit written comments on the draft permit and other documents, and/or may request a public hearing. A fact sheet concerning the proposed action upon applications for major TSD facilities

and public notice are prepared. A public notice is published in a local newspaper and broadcast over local radio stations. A public hearing may be held if significant interest is expressed during the public comment period. A response to comments is prepared and disseminated to all commentors. Prior to the forty-five (45) day public comment period, all residents within one quarter ($\frac{1}{4}$) mile of the hazardous waste facility are personally notified of the application submission.

- (8) Final Action - After public participation, a final determination is made upon the merit of issuance or denial of the permit or other permit action, and transmitted in writing to the applicant.

The complexity and type(s) of TSD facility governs both the time required to complete a permit action and the education background of the review staff who perform the application review. Permitting of TSD facilities normally requires from nine (9) to thirty (30) months to complete. Storage facilities require substantially less time than the more complex and environmentally sensitive land disposal facilities. Staff engineers (environmental, civil, and chemical), geologists, chemists and administrators all may participate as a part of an application review team, depending on facility type and complexity. See Table 4.1.2.

The APCC permitting process generally follows the same sequence as that of DWR. The most significant differences between the APCC and DWR permitting processes are: (1) APCC does not use a formalized "working draft permit"; (2) trial-burns for existing incinerators must be completed prior to issuance of an operating permit; and (3) APCC requires two facility permits, one for facility construction and one for operation.

APCC operating permits specify conditions to ensure that APCC Regulation XXV, Section 6 air pollution performance standards are being met. Currently, incinerators are the sole type of TSD facility which is subject to such standards. In the event that air pollution performance standards are adopted for other TSD facilities, such facilities will be required to obtain operating permits.

APCC construction permits are required for all new TSD facilities which emit pollutants to the air. Construction permits specify conditions to ensure that new facilities are built in a manner to ensure protection of health and environment. Section 7 of APCC Regulation XXV specifies minimum facility design

requirements. For new incineration facilities an APCC operating and construction permit are issued concurrently.

The maximum effective term of TSD facility permits are:

- DWR TSD facility permit - 10 years,
- APCC construction permits - Life of facility,
- APCC operation permits - 10 years,
- DWR post-closure permits - 10 years.

TSD facility permits issued under the State HWMP may be revoked for cause, modified as required, or temporarily suspended. Closure plan approvals and post-closure permits are considered permitting actions and are subject to the processes described above. DNR and APCC permitting provisions are equivalent regarding modification and revocation of permits. The causes allowable for such permit actions are set forth in DNR Regulations §11.18 and 11.19 and APCC Regulation XXV, §14.

Modifications of permit or revocation and reissuance are performed in the same manner as any new permit action, i.e by draft permit, public participation and final action. Suspension, revocation and termination decisions are in the form of an intent to act, which is a form of draft permit and subject to public participation as described above.

The public participation process utilized by APCC is somewhat different from that of DNR. APCC requires that the public notice be published and broadcast by the same methods as DNR; but requires that they be performed by the applicant. DWR provides these notice methods for applicants for DWR permits.

Emergency permits are authorized under the State HWMP (Section 11.09 of DNR Regulations, and Section 23 of APCC regulations). They may be issued in writing or verbally (with supporting documentation following). They may be issued only in the event that a situation pose an imminent and substantial threat to public health or environment. Their duration may only be for up to ninety (90) days. They must also be accompanied by public notice identical to normal permits.

Permits-by-rule are provided for POTW's that accept hazardous wastes (so long as they comply with certain program requirements, such as identification numbers, manifest system, operational recordkeeping and reporting) and for underground injection wells that are

permitted pursuant to the State UIC Program. These permit-by-rule provisions are similar in scope to those provided for in the Federal Program. See DNR Regulations Section 11.08.

4.1.3 Application Review

TSD facility application review is performed in the Permits Section of the Solid & Hazardous Waste/ Groundwater Branch of DWR , and the Hazardous Waste Division of APCC. When an application or facility requires that both APCC and DWR act upon it coordination is performed staff to staff between the agencies. This coordination is carried out using frequent telephone communication and conferences. Joint public hearings are held in these cases, and simultaneous issuance of final action is coordinated as closely as possible.

The Permits Section Leader assigns specific applications to a "lead" reviewer, who may be an engineer, chemist or geologist, depending on facility type and current workload. The Permit Section Leader also makes review team assignments for each application at the time the application is received. The lead reviewer is responsible for technical review of those portions of the application for which he has expertise, coordination of review of other review team members, tracking of an application's review status, maintaining contact with the applicant's representative, and assuring that application review and applicant responses are performed in a timely manner.

DNR utilizes the "review team" concept for TSD facility permit applications. The lead reviewer is responsible to the Section Leader for assuring that the application is reviewed and permit process is followed within a reasonable time period. Review team assignments are based upon types of expertise needed for the particular type of TSD facility application and available personnel. Review team composition is dictated by the type of TSD facility; and is assigned to assure that any expertise necessary for adequate technical/ administrative review of the application is provided.

Normally such review teams will include, at a minimum:

TABLE 4.1.2
DWR Review Team Composition

<u>TSD Facility Type</u>	<u>Composition of Review Team</u>
Land Disposal (Incl. storage & treatment impoundments)	Environmental engr., chemist or chemi-engr., geologist and inspector.
Incinerator	Chemical engr., inspector, and chemist (optional)
Storage Facility (non-impoundment)	Chemical or environmental engr., chemist and inspector.
Treatment Facility (non-impoundment)	Chemical or environmental engr., chemist and inspector.

Completeness review may result in a Notice of Deficiency (NOD) being sent to the applicant. The lead reviewer is responsible for assembling these comments and drafting the NOD. If the applicant is unresponsive to a NOD or subsequent information requirements, the lead reviewer will refer the problem for enforcement and cooperate until the problem is resolved. Additionally the lead reviewer is responsible for assembling the comments of the review team members and resolving any in-house issues prior to advising the applicant of DWR comments on the application. Normally, any comments made on an application are transmitted by letter to the applicant, indicating the time period within which the applicant is expected to respond.

Conferences are held with the applicant to discuss the application and provide guidance. These conferences may be requested by the applicant or DWR.

4.1.4 Appellate Review

4.1.4.1 Water Resources Board

Persons aggrieved or adversely affected by an order of the Chief of the Water Resources Division made and entered in accordance with the Hazardous Waste Management Act, or by the failure or refusal of the Chief 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 Chief

under the Act may appeal to the State Water Resources Board. Pursuant to Section 19 of the Hazardous Waste Management Act, the appeal is perfected by filing a notice of appeal within thirty days of receipt of the contested order. The Board must notify the Water Resources Division of the appeal within three days after the notice of appeal is filed. The Chief of the Water Resources Division must respond within seven days of receipt of notice of the appeal.

Hearings before the Water Resources Board are adjudicatory proceedings governed by the West Virginia Administrative Procedure Act. In addition, the Board has promulgated procedural regulations governing appeals. All testimony, evidence and rulings are recorded and transcribed. The hearing is held before a quorum of the board unless the parties stipulate to take evidence before a hearing examiner. After the hearing is completed, the board considers all testimony and evidence and makes a determination embodied in an order, which is accompanied by finding of fact and conclusions of law. The order, findings, and conclusions are served upon all parties to the proceeding. The decision of the board is final unless vacated or modified by an appropriate court of law.

4.1.4.2 Air Pollution Control Commission

Any person aggrieved or adversely affected by an order of the Director of the APCC, made any entered in accordance with the provisions of the State Hazardous Waste Management Act, or by the failure or refusal of the Director 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 under the provisions of the Act, may appeal to the Air Pollution Control Commission. See W. Va. Code § 20-5E-7(f).

Pursuant to Section 6 of the Air Pollution Control Law, West Virginia Code §16-20-6, the appeal is perfected by filing a notice of appeal within fifteen days of receipt of the contested order. The Commission must notify the Director of the appeal within eight (8) days after the notice of appeal is filed. The APCC Director must respond within seven days of receipt of notice of the appeal, and any hearing will be held within twenty (20) days of the date upon which the appeal was received by the Commission unless there is a postponement or continuance.

As with hearings before the Water Resources Board, hearings before the Commission are adjudicatory proceedings governed by the State Administrative Procedure

Act. The hearing is held before a quorum of the Commission. All testimony, evidence, and rulings are recorded. After the hearing is completed, the Commission considers all testimony and evidence and makes a determination embodied by an order, which is accompanied by findings of fact and conclusions of law. The order, findings, and conclusions are served upon all parties to the proceeding. The decision of the Commission is final unless vacated or modified by an appropriate court of law.

The Hazardous Waste Management Act, §20-5E-7(f) provides that the judicial review procedures of the Air Pollution Control Law, §16-20-7 governs appeals from commission orders under §16-20-7. Persons adversely affected by an order or decision in a contested case before the Commission are entitled to judicial review in the appropriate county Circuit Court. Appeals from orders affecting Article 5E permits are appealed to the Kanawha County Circuit Court. Any person adversely affected by the final judgement of the circuit court may seek review by appeal to the Supreme Court of Appeals.

4.2 Program Revision Procedures

The procedures for program revision will vary whether the necessary revision requires either a statutory or regulatory modification. In either case, the State is able to comply with either the two (2) year time period for statutory changes or with the one (1) year time period for regulatory changes as required by 40 CFR §271.21(e).

The West Virginia Legislature convenes every year for a sixty day session. The session normally convenes on the second Wednesday of January and continues for sixty days thereafter. (The legislative session convenes on the second Wednesday of February in the calendar year following the gubernatorial election.) Thus, any required statutory changes can be made within the two year period required by 40 CFR §271.21(e).

Program regulation revision procedures are governed by the State's Administrative Procedures Act (APA), West Virginia Code 29A-1-1 et seq. The APA requires public notice in the State Register of proposed regulations for at least thirty (30) days. At the close of the comment period, the agency revises its proposed regulations accordingly. Depending on whether the rules are classified as either legislative, interpretive or procedural, the agency either submit the rule to the Legislature or finally promulgates the

rule. If the regulations are "legislative" rules, then the rules must be submitted to the Legislative Rulemaking Review Committee (LRRC) and ultimately to the entire legislature for approval. The agency must promulgate the final rule within ninety (90) days after legislative approval.

Procedural or interpretive rules, however, need not be submitted to and approved by the Legislature. Rather, after considering public comment, the agency may promulgate such rule but must do so within six (6) months after the close of the comment period.

The state agencies, therefore, can normally respond to EPA required regulatory changes within one (1) year. Depending on the Federal date of promulgation or self-implementing effective date, however, the State may not be able to promulgate legislative rules through the full Legislature within one (1) year. For example, the State may have one (1) year from January 1 to revise regulations. This may not allow the State enough time to analyze the new rule, propose it, finalize it for submission to the Legislature (indeed, the State APA requires that all rules should be submitted to the LRRC two hundred and ten (210) days prior to the last day of the legislative session) and passage by the immediate legislative session. In this example, the one (1) year time period would run before the beginning of the next legislative session and the State could not comply with EPA time requirements.

The emergency rulemaking procedure of the State APA, however, allows State Agencies to meet such time periods in such a situation. The emergency rulemaking provisions allow the State Agency to promulgate fully effective regulations without legislative approval, provided that such regulations are inter alia "...necessary to comply with a time limitation established by this code or by a Federal statute or regulation or to prevent substantial harm to the public interest." West Virginia Code §29A-3-15(e). Emergency regulations are effective up to fifteen months (i.e. long enough to gain final legislative approval). Thus, the State's program can meet the applicable provisions of 40 CFR §271.21 (e).

COMPLIANCE AND ENFORCEMENT

Four agencies share responsibility for assuring compliance with and enforcing West Virginia's EPA authorized hazardous waste management program. The Division of Water Resources (DWR), through its Solid and Hazardous Waste/ Ground Water Branch, conducts compliance inspections of generators and facilities. DWR shares responsibility for inspecting transporter terminals and transfer facilities with the Department of Highways and the Public Service Commission. It also shares responsibility for inspecting incinerators, thermal treatment units, and other processes that discharge or may discharge hazardous waste into the air with the Air Pollution Control Commission. Section III of the MOU (Appendix C and D) between DNR and the other agencies delineates each agency's compliance monitoring and information sharing responsibilities.

5.1 Statutory Enforcement Authority

West Virginia's Hazardous Waste Management Act, West Virginia Code §20-5E, provides broad compliance monitoring and enforcement authority to the administering agencies. As required by 40 CFR §271.16, the Act provides the State agencies with authority to remedy violations of their programs through enforcement orders, civil suits for injunctive relief, civil penalties, and criminal fines. All State HWMP agencies have the same enforcement authority (See West Virginia Code §20-5E-7).

5.1.1 Enforcement Orders

Orders may be issued to remedy several types of situations. First, under §20-5E-14 (a) of the Act, a State HWMP Agency may issue orders to remedy violations of the Act or violations of any permit, order, or regulation issued pursuant to the Act. These orders include cease and desist orders; orders suspending, revoking, or modifying a permit; and orders requiring remedial action. This order can restrain persons from engaging in any unauthorized activity, including those which are endangering or causing damages to the public health or environment.

Second, under §20-5E-17 of the Act, which is modeled after Section 7003 of RCRA, a State HWMP Agency may issue orders necessary to protect public health, safety, and the environment from imminent and substantial endangerments.

5.1.2 Civil Suits

The Act contains two sections authorizing suits for injunctive relief. Under §20-5E-16 a State HWMP agency may seek injunctive relief to remedy violations of the Act or any permit, order, rule or regulation issued pursuant to the Act. Under §20-5E-17, the State HWMP Agency may seek injunctive relief to restrain any person from engaging in activities causing an imminent and substantial endangerment to the public health, safety, or environment. In addition, West Virginia's Hazardous Waste Management Act does not require an agency to revoke a permit prior to commencing suit.

5.1.3 Civil Penalties

Section 20-5E-16 of the Act provides for civil penalties not to exceed \$25,000 for each day of violation of the statute, permit, regulation or order. In addition, the State agency which prevails may be awarded costs and attorney's fees.

5.1.4 Criminal Fines and Penalties

The assessment of criminal fines is authorized by §20-5E-15 of the Act, which is similar in scope to Section 3008(d) of RCRA. Knowing transportation of hazardous waste to an unpermitted facility and knowing treatment, storage or disposal of hazardous waste without a permit or in violation of a permit are felonies for which fines of up to \$50,000 and/or a jail term of one to two years may be assessed. Knowingly providing false information and knowingly destroying, altering, or concealing records are misdemeanors for which fines of up to \$25,000 and/or a jail term of one year may be assessed.

In addition to the above criminal fines and penalties, the Act provides for criminal fine and penalties consistent with RCRA §3008(e) for knowing endangerments of human life or bodily injury. See West Virginia Code §20-5E-15(d).

5.1.5 Public Participation

The State HWMP opportunities for public participation during enforcement complies with and is more extensive than the public participation requirements of 40 CFR §271.16 (d). In particular, any person may intervene as of right in any formal enforcement proceeding. See Section 2.4.

5.2 Agency Enforcement Programs

The following sections describe the compliance monitoring and enforcement programs of the four agencies.

5.2.1 Department of Natural Resources

Compliance with the requirements of the Hazardous Waste Management Program is assessed through compliance evaluation and sampling inspections and enforced through appropriate administrative and enforcement actions.

5.2.1.1 Regular Compliance Evaluation Inspections (CEI's)

Inspections will be completed for both major and non-major TSD facilities at least once per year. Selected generators and transporters will be inspected annually with the balance inspected at least once every two years. A major facility as defined by West Virginia regulations is a facility that processes 1,000 tons of hazardous waste or more annually.

5.2.1.2 Investigations of Non-Compliance

Inspections are scheduled or are initiated by complaints. The inspector completes an inspection report and submits it to the Compliance Assurance Section. The report is also sent to the generator or the facility. The report contains a compliance evaluation which serves to notify the generator or facility of the violations identified by the inspector. A re-inspection is scheduled for sixty (60) days following the initial inspection to determine compliance.

If significant violations are discovered, administrative orders may be issued or civil or criminal actions initiated. See Appendix E. The Division has adopted an enforcement protocol consistent with EPA's recommendation. Appendix F.

5.2.1.3 Sample Collection and Analysis

When samples are obtained during an inspection, certain procedures are followed. First a sampling plan is completed which clearly outlines the objectives and conditions of each sampling point. Health and safety considerations are monitored through a Site Monitoring Record. Chain of custody records are maintained for

the samples collected to insure sample integrity. Chain of custody is continued in the lab as well as quality control. When samples are split with the facility, a receipt for samples is issued. See Appendix G All samples will be analyzed using approved or recommended EPA procedures pursuant to either 40 CFR Part 136 or the approved QA/QC plan.

5.2.1.4 Enforcement Follow-up Inspections

A running log of inspections and enforcement actions is maintained to insure appropriate follow-up on violations. (Appendix H). A facility status sheet (Appendix I) is completed for each facility and updated monthly when appropriate.

Forms and flow charts have been provided relating to processing facility inspections, non-notifier reports, ground water exception reports, manifest discrepancy reports, and hazardous waste samples (Appendix J).

5.2.2 Air Pollution Control Commission

5.2.2.1 Regular Compliance Inspections

The WVAPCC Hazardous Waste Division will conduct compliance inspections of hazardous waste incineration facilities. There are six existing incineration facilities within the State. Each will be inspected at least annually.

Some existing incineration facilities are expected to be issued State hazardous waste management permits by the end of Federal fiscal year 1985. Compliance will be judged by their conformity with permit conditions. Pending issuance of an APCC permit the facilities will be inspected to assure their compliance with Federal interim status standards, 40 CFR 265, Subpart O.

Inspectors will document a facility's compliance status primarily through record review and observation of incinerator operation. In most cases, the inspecting engineer is also the individual who evaluated the facility's Part B permit application. Prior to any inspection, a file review is conducted to alert the inspector to prior violations, problems, and permit requirements.

5.2.2.2 Investigations of Non-Compliance

The APCC Hazardous Waste Division will investigate reported or suspected violations of the State Hazardous

Waste Management Act if the suspected or reported problem relates to air emissions. Response activities will be determined by the nature of the activity and the potential of the suspected problem to cause an adverse effect on human health and the environment.

Appendix K illustrates the chain of events following a facility inspection and the process to issue administrative orders. When a violation of APCC's Regulation XXV or the State Hazardous Waste Management Act is noted, an oral report is immediately made to the chief of the Hazardous Waste Division. If the violation could endanger health or environment, an oral report is also made to the APCC Director and an administrative order is issued. Normally such Order is issued with five (5) days after the violation was observed. When minor violations are noted, the Chief of the Hazardous Waste Division issues a Notice of Violation (Appendix L). The facility is then re-inspected, usually within thirty (30) working days, to determine if remedial actions have been conducted.

Continued minor violations could also result in issuance of an administrative order. Noncompliance with an administrative order results in referral of the case to the Commission. The Commission may seek penalties, modify the Director's Order, and refer the case to the State Attorney General's Office for subsequent civil or criminal action. Cases are referred to the Attorney General's Office by sending a letter to the Attorney General's Office requesting fromal assistance.

5.2.2.3 Sample Collection and Analysis

The APCC Hazardous Waste Division is not presently equipped to collect and analyze waste samples of unknown origin. If Commission staff will be required to conduct ambient sampling programs to assess the effect hazardous waste facilities have on ambient air quality, increased technical and laboratory capabilities will be required.

5.2.3 Department of Highways

Roadside inspections of hazardous waste transporters occur regularly on a statewide basis. The inspection sites are based on the bolume of hazardous waste being transported in particular areas of the State. This information was provided by the comprehensive hazardous waste survey prepared by DNR and through a comprehensive program of auditing all State generators and transporters. This data is currently being computerized for utilization by all agencies.

As resources allow, generators and transporters are audited to monitor compliance with the manifest system requirements. Criteria for selecting generators and transporters for audit include the volume of hazardous waste shipped and history of manifest system violations. Generally all generators/transporters are audited on a yearly basis, some major generator/transporters will be audited biannually.

If an inspection results in discovery of violations, DOH can issue cease and desist orders or can commence civil actions or criminal action in an appropriate circuit court.

The DOH Enforcement Program is provided in Appendix M. A schematic of events leading to enforcement action is contained in Appendix N.

5.2.4 Public Service Commission

Inspections for proper labeling and placarding and manifest audits will be conducted during normal safety inspections of track and rolling stock. Inspections are normally conducted on a monthly basis, but will occur no less frequently than once a quarter. If a violation is observed, the enforcement provisions of West Virginia Code §20-5E may be invoked.

Manifest System

West Virginia's hazardous waste management regulations establish a manifest system identical to EPA's manifest system. The manifest content is the same as under the Federal program. Generators have the primary responsibility for properly completing the manifest, providing copies to the initial transporter, obtaining a signed and dated copy from the initial transporter, receiving a signed and dated copy from the designated hazardous waste facility, and filing exception reports with the DNR. Transporters must not accept a shipment of hazardous waste from a generator unless it is accompanied by a signed manifest. They must also return a signed and dated copy to the generator before leaving the generator's property, ensure that the manifest accompanies the shipment, and obtain a signed and dated copy of the manifest from the facility or the next transporter or the designated facility. Facility owners or operators, or their agents, are responsible for identifying discrepancies between the manifest and the shipment, noting discrepancies on the manifest, providing transporters with a signed and dated copy of the manifest, attempting to resolve discrepancies, and returning a signed and dated copy of the manifest to the generator.

The DNR, Public Service Commission, and the DOH share responsibility for enforcing the manifest system. As discussed in the previous section on compliance monitoring and enforcement, DNR inspects generators, transporter terminals, and transfer stations. DOH conducts roadside inspections and audits both generators and transporters. The PSC inspects rail transporters.

DNR has executed a Cooperative Agreement with the United States Department of Transportation (Appendix O). It has also executed a MOU with the Department of Highways (Appendix D).

Under the terms of the MOU, DNR will receive all manifest discrepancy and exception reports and will advise DOH of them. All manifest discrepancy and exception reports that cannot be resolved through the generator will be resolved by DNR through contact with the receiving state, DOH, the U.S. Department of Transportation, and the U.S. Environmental Protection Agency. A report of findings will be sent to each agency upon completion of the investigation. Enforcement actions will be coordinated between DNR and DOH.

Estimates of Regulated Activities

This section of the Program Description provides estimates of the numbers and types of generators, transporters, and TSD facilities in the State, and an estimate of the quantities of hazardous wastes managed in West Virginia. TSD facility information is from 1984 data compiled by DNR. Hazardous waste quantity estimates are from the "1982 Hazardous Waste Survey" (1981 data). Estimated numbers of generators and transporters are from 1983 data.

7.1 Estimated Hazardous Waste Quantities

The amount of hazardous waste has been estimated from the "1982 Hazardous Waste Survey", which contains data collected in 1981. Hazardous waste quantities for the State are shown on Table 7.1.

TABLE 7.1

<u>ACTIVITY</u>	<u>ANNUAL QUANTITIES</u>
Generated in West Virginia	7,450,000 tons
Treated in West Virginia	13,435,000 tons
Disposed in West Virginia	168,000 tons
Disposed outside West Virginia	3,900 tons

7.2 Estimated Numbers and Types of Regulated Activities

The State HWMP provides for regulation of hazardous waste generators, transporters and TSD facilities. The following estimates of regulated activities have been compiled from 1983 and 1984, in the form recommended by EPA in the Authorization Guidance Manual. See Table 7.2.

The listing of types and numbers of regulated activities given in the table is based upon the following classification criteria:

- All TSD facilities are also generators;
- Disposal facilities are any TSD facilities which have a regulated unit with a "D" designation, no matter what other units are also present;
- Treatment facilities are those TSD facilities which have a "T:" or "T" and "S" designated units, but do not have any "D:" units; and
- Storage facilities are TSD facilities with only "S" designated units.

TABLE 7.2
ESTIMATED TYPES AND NUMBERS OF
REGULATED FACILITIES IN WEST VIRGINIA

REGULATED ACTIVITY	STATE INTERIM STATUS	ADMINISTRATIVE STATUS		TOTAL
		STATE PERMIT	RCRA PERMIT	
* Generators	N.A.	N.A.	N.A.	64 (25)
Transporters	N.A.	N.A.	N.A.	12
** Storage Facilities	10	6	6	11
** Treatment Facilities	20	0	1	21
** Disposal Facilities	7	0	0	7
** Total TSD Facilities	37	6	7	39

* The number, in the "Total" column, in parentheses is that number of facilities which are only generators, the remaining 39 are also TSD facilities.

** Three TSD facilities have received interim status from EPA, but have not filed a Part A with West Virginia.

These criteria reflect a classification scheme based on the "highest" or most environmentally sensitive unit designated at the TSD facility. Many regulated TSD facilities have units of more than one designation within the facility.

Those TSD facilities which have a Part A application on file with DNR and/or APCC are included in the table as having "State Interim Status". Additionally, TSD facilities with RCRA and State permits are the same and are reported in that manner.

A further breakdown of TSD facilities by unit designation is shown in Table 7.2.1.

The state has requested Part B applications from 15 TSD facilities, and has 15 Part B applications in-house undergoing review.

TABLE 7.2.1

UNIT TYPE	DESIGNATION	NUMBER OF UNITS IN WV
<u>Storage Units</u>		
Container	S01	39
Tank	S02	25
Waste Pile	S03	1
Surface Impoundment	S04	12
		<u>77</u>
<u>Treatment Units</u>		
Tank	T01	18
Surface Impoundment	T02	17
Incinerator	T03	7
Other	T04	15
		<u>57</u>
<u>Disposal Units</u>		
Landfill	D80	4
Surface Impoundment	D83	3
		<u>7</u>
<u>Total No. of Units</u>		141

5.

APPENDIX

LIST OF APPENDICES

APPENDIX A	List of TSD Facilities Which Require Groundwater Monitoring
APPENDIX B	Pamphlet Publicizing Hazardous Waste Dumpsite Search
APPENDIX C	MOU between the Division of Water Resources and the West Virginia Air Pollution Control Commission
APPENDIX D	MOU between the Division of Water Resources and the West Virginia Department of Highways
APPENDIX E	Division of Water Resources Enforcement Flow Charts
APPENDIX F	Enforcement Protocol
APPENDIX G	Sample Collection and Analysis Forms
APPENDIX H	Compliance Monitoring and Enforcement Log
APPENDIX I	Facility Status Sheets
APPENDIX J	<i>ONR</i> DWR Forms and Flow Chart
APPENDIX K	APCC Enforcement Flow Chart
APPENDIX L	APCC Notice of Violation
APPENDIX M	DOH Enforcement Programs
APPENDIX N	DOH Enforcement Flow Chart