WEST VIRGINIA HAZARDOUS WASTE PROGRAM DESCRIPTION

December, 1999

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SECTION I

INTRODUCTION

This document is a report describing the hazardous waste regulatory program administered by the West Virginia Division of Environmental Protection (WVDEP), the Division of Highways and the Public Service Commission. It replaces the Program Description (PD) previously submitted as a part of the State's application for base program authorization.

This document reflects the evolution of the State's program since the base program was authorized, and also summarizes how the Federal regulatory requirements for the base program and amendments, through RCRA Cluster VII, are implemented by the State. This program description has been prepared in accordance with the requirements of 40 CFR §271.6 and is organized as follows:

Section I is this introduction.

Section II describes the Scope, Structure, Coverage, and Process of the Hazardous Waste Program (HWP) and includes a discussion of the legislative and regulatory provisions the State administers as well as a discussion of the differences between the Federal and State laws and regulations.

Section III provides a brief history and description of the WVDEP, which is the State lead agency assigned responsibility for the Hazardous Waste Program. Also, in Section III, the specific divisions which comprise the HWP are discussed and their individual responsibilities are examined. This section additionally includes a discussion of the responsibilities and procedures for coordination among various State agencies and EPA, and includes organizational charts of many of the agencies discussed. Checklists are included as an attachment to the Office of Legal Services' Statement listing both (Hazardous and Solid Waste Amendments) HSWA and non-HSWA activities to provide a concise, definitive statement of which program areas the State has (or is seeking) authorization for as well as the program areas for which EPA remains responsible.

The State is not seeking program authorization, at this time, for the following:

- HSWA corrective action,
- mixed wastes,
- the de-listing of hazardous wastes,
- requirements for existing and newly regulated surface impoundments provided in RCRA Section 3005(j)(2) & (6), and
- variances from surface impoundment requirements provided in RCRA Section 3005(j)(2)-(9) and (13).

Section IV deals with staffing and funding procedures and identifies hazardous waste staff and funding resources required to carry out the activities that are the subject of this program revision. This section additionally distinguishes between new resources and existing resources being assigned to the new responsibilities. The impact on the existing authorized program of adding all amendments through RCRA Cluster VII with the exception of the Corrective Action Revision Checklists 17L, 44A, 44B, 44C and 121 is also examined. The following RCRA program elements are not included in this authorization revision package: Corrective Action, Delisting, Radioactive Mixed Waste, and the requirements for existing and newly regulated surface impoundments provided in RCRA Section 3005(j)(2) & (6) and the variances from surface impoundment requirements provided in RCRA Section 3005(j)(2)-(9) and (13). In addition to RCRA Cluster VII dated July 1, 1997, the HWP also encompasses these program elements addressed in the following Federal Register Notices and incorporated within the State's rules currently in effect; 63 Federal Register 28556 (May 26, 1998), 63 Federal Register 33782 (June 19, 1998), 62 Federal Register 64636 (December 8, 1997) and 63 Federal Register 31266 (June 8, 1998).

Section V describes the State Procedures that will be used to implement the program revision. It examines permitting, the biennial report, notification, compliance monitoring and enforcement.

Section VI is reserved for a description of WVDEP's structure and procedures for implementing HSWA

Corrective Action, Mixed Radioactive Waste and Delisting as part of the HWP. The WVDEP anticipates applying for authorization for those portions of the HWP in the year 2000.

Section VII examines processes and resources of the Compliance Assurance and Emergency Response Section.

Section VIII shows past regulated activities and estimated regulated activities as of the date of the Program Description.

Section IX is set aside for Copies of State Forms.

Section X is an Appendices containing Memoranda of Agreements, Memoranda of Understandings, inter-agency financial agreements and other documents providing a detailed picture of agency roles and responsibilities, and coordination between the agencies implementing the HWP.

SECTION II

PROGRAM SCOPE, STRUCTURE, COVERAGE, AND PROCESSES

A. Scope and Coverage of Program Revision

The regulatory program described in this document reflects the base program for which the State is already authorized and regulations, in Clusters, for which the State is seeking authorization. All amendments are through RCRA Cluster VII with the exception of the Corrective Action Revision Checklists 17L,44A,44B, 44C and 121. The following RCRA program elements are not included in this authorization revision package: Corrective Action, Delisting, Radioactive Mixed Waste, and the requirements for existing and newly regulated surface impoundments provided in RCRA Section 3005(j)(2) & (6) and the variances from surface impoundment requirements provided in RCRA Section 3005(j)(2)-(9) and (13). RCRA Regulatory Cluster VII dated July 1, 1997 as well as program elements addressed in the following Federal Register Notices and incorporated within the State's rules currently in effect; 63 Federal Register 28556 (May 26, 1998), 63 Federal Register 33782 (June 19, 1998), 62 Federal Register 64636 (December 8, 1997) and 63 Federal Register 31266 (June 8, 1998).

This document includes the completed revision checklists that demonstrate the State rules (regulations) to be on a par with the Federal program and, at times, more stringent in meeting the requirements of Clusters I-VII, with the above-noted exceptions. There are some specific differences between the State and the Federal program which are discussed in the next subsection. The State, in common with the Federal program, covers a like universe of generators and transporters except that the State requires that all hazardous waste generators, regardless of size, contact the State or EPA and obtain an EPA Identification Number. Relative to enforcement of the State's hazardous waste program, the State's program is equivalent to the Federal program. This is demonstrated in the State Procedures Section of this program description.

B. Differences Between Federal and State Regulations

The State's base program is generally equivalent to the Federal program. There are, as previously mentioned, areas where the State program is either more stringent, or broader in scope, than the Federal program. Notable differences between the State and Federal programs include:

More Stringent and Broader in Scope Standards

West Virginia's HWP is, in some areas, more comprehensive than the federal program. See e.g. Checklists attached to the Office of Legal Service's (OLS) 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. The program elements that are more stringent than the federal program include:

- additional public notice requirements for permitting;
- a zero degradation standard for groundwater protection;
- preparation of environmental analyses when permitting new commercial facilities;
- protection standards for uncovered storage tanks;
- notification requirements for CESQG facilities
- prohibition against placement of CESQG hazardous waste in State landfills

The only standard which is broader in scope than the federal program is the standard which pertains to permit application fees. See W.Va. Code 22-18-6(a)(11) and 33 CSR 20, Section 11.4 and 40 CFR Section 264.98 (g). The State rules contain a fee schedule for permit applications.

Additional areas where the State program differs from the Federal program are identified in the consolidated checklists and revision checklists included in the OLS's Statement. The significance of these differences are discussed in detail in the OLS's Statement. Table 1 shows the general correspondence between State rules and Federal regulations.

One provision regarding Groundwater Protection Standards at WV CSR Title 33 Series 20-7.5.c requires the Chief of the Office of Waste Management to specify in the facility permit the frequencies for collecting samples required under 40 CFR 264.99(g). To be consistent with EPA, the State has agreed in the EPA/State Memorandum of Agreement (MOA) to require sample collection at least annually. Under no situation will the frequency be less than what would be required by EPA. Pursuant to its provision at WV CSR Title 46 Series 12-4.1, in any instance where the 46 CSR 12 standard is less stringent than the Federal requirements, the State agrees to act in accordance with the Federal regulations and use the 40 CFR Parts 264 and 265 Subpart F standards for purposes of determining the need for corrective action at hazardous waste treatment, storage or disposal facilities.

TABLE 1

GENERAL CORRESPONDENCE BETWEEN STATE RULES
AND FEDERAL REGULATIONS

EPA REGULATION Code of Federal Regulations (CFR)	STATE RULE	DESCRIPTION
PART 260	33-20-2, 45 CSR 25	Hazardous Waste Management System: General
PART 261	33-20-3, 45 CSR 25	Identification and Listing of Hazardous Waste
PART 262	33-20-5	Standards Applicable to the Generators of Hazardous Wastes
PART 263	33-20-6, 150 CSR 11, 157 CSR 7	Standards Applicable to the Transporters of Hazardous Wastes
PART 264	33-20-7, 45 CSR 25	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
PART 265	33-20-8, 45 CSR 25	Interim Status Standards for Owners and Operators of Hazardous Waste TSD Facilities
PART 266	33-20-9, 45 CSR 25	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
PART 268	33-20-10	Land Disposal Restrictions
PART 270	33-20-11, 46 CSR 8, 45 CSR 25	Permits for TSD Facilities
PART 273	33-20-13, 150 CSR 11, 157 CSR 7	Universal Waste Rule
PART 279	33-20-14, 150 CSR 11, 157 CSR 7, 45 CSR 25	Standards for the Management of Used Oil

SECTION III

STATE AGENCY RESPONSIBILITIES

A. Organization and Structure of the Hazardous Waste Program

The West Virginia Hazardous Waste Management Act, Chapter 20, Article 5E, was originally written to give the primary implementation authority for the HWP to the West Virginia Department of Natural Resources (WVDNR). Therefore, from 1981 until 1992, the WVDNR was the lead agency assigned HWP responsibilities. State Government, however, underwent a major reorganization in 1992 and the West Virginia Department of Environmental Protection (WVDEP) was formed. On July 1, 1992, Executive Order No. 8-92, signed by Governor Gaston Caperton, transferred all sections of the Office of Waste Management from the WVDNR to the WVDEP. Subsequently, during the 1994 State Legislative Session, the Environmental Protection Reorganization Bill was passed officially transferring all environmental statutes formerly enforced by the WVDNR to the WVDEP. The WVDEP was originally under the Department of Commerce, Labor and Environmental Resources. This department was abolished by the 1994 Legislature and the agencies reorganized with the WVDEP being placed under the Bureau of Environment. The Director of the Division of Environmental Protection also serves as the Commissioner of the Bureau of Environment and answers directly to the Governor.

An organizational chart of the WVDEP is on page III-3. The Office of Waste Management (OWM) is the office within the WVDEP that is primarily responsible for regulation of hazardous waste management within the State. This responsibility includes regulation of hazardous waste generators, and transporters, along with treatment, storage and disposal facility operators. In 1997, the Office of Waste Management was restructured and the Office of Environmental Remediation (OER) was created to oversee voluntary site clean up activities. An organizational chart for the Office of Waste Management is on page III-4. Within the WVDEP, the Office of Air Quality (OAQ) regulates hazardous waste air emissions and has entered a financial agreement with the OWM to receive pass-through funds. Outside of the WVDEP, two agencies, the Division of Highways (DOH) and the Public Service Commission (PSC), regulate the remaining aspects of hazardous waste transportation. The OAQ organizational chart is on page III-6. In 1999, the OWM entered into a financial agreement with the Office of Water Resources (OWR) to ensure that the WVDEP conducted waste minimization activities.

B. The Hazardous Waste Program

Within the OWM, regulatory authority over hazardous waste is assigned to the Compliance Assurance and Emergency Response Section (CAERS) and the Hazardous Waste Management Section (HWMS). All aspects of hazardous waste management including compliance monitoring, enforcement, and permitting are handled by these two sections, with the exception of air permits, and air compliance monitoring and enforcement which are handled by the OAQ. Organizational charts for the OWM's CAERS and HWMS are found on pages III-5 and III-7, respectively. The OWM's CAERS is the lead agency for communication between the State and EPA, although HWMS and OAQ communicate with EPA on specific matters. CAERS works with the Office of Legal Services (OLS) on matters such as the review of proposed rules or regulations and civil enforcement actions. An organizational chart for the OLS is on page III-8.

The HWMS performs permitting functions with respect to owners and operators of treatment, storage and disposal facilities (TSDs), and performs corrective action work sharing activities. The CAERS monitors and enforces RCRA requirements pertaining to generators of all classifications, certain RCRA requirements pertaining to hazardous waste transporters, and all requirements pertaining to TSDs, with the exception of RCRA requirements for air emissions which are governed by OAQ. The Compliance Monitoring Unit investigates for non-compliance with hazardous waste management requirements when conducting field investigations of facilities within their jurisdiction, and refers violations to the Enforcement Unit. Additionally, the OWM has established rules governing transportation of hazardous waste by air and water.

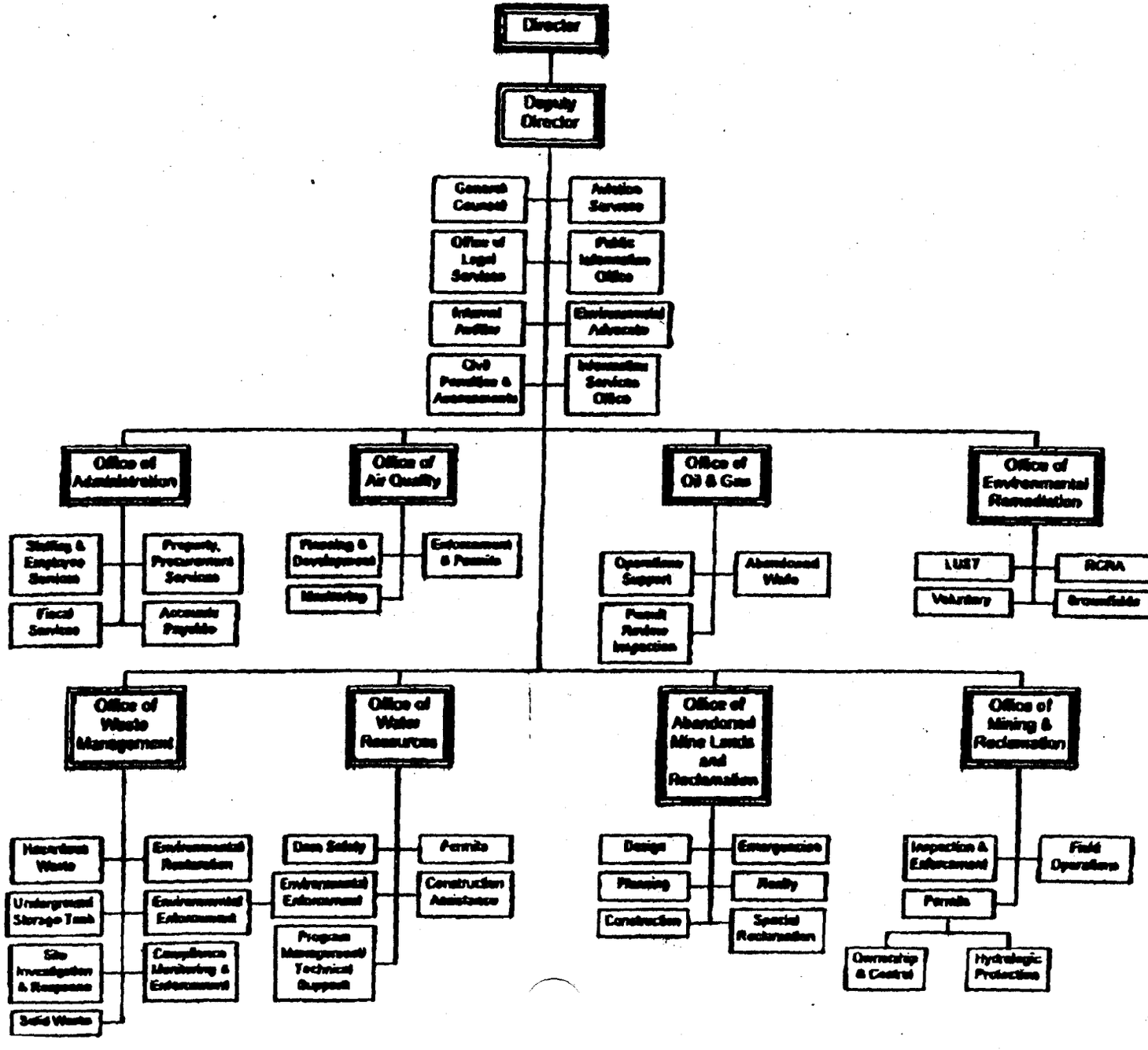
In addition to the enforcement of most RCRA regulations, the CAERS is responsible for developing most of the State's rules on hazardous waste management and for demonstrating to EPA the State's ability to implement an effective hazardous waste regulatory program. The CAERS prepares the hazardous waste rules based on State and Federal statutory requirements. The various duties of this section in support of the RCRA program are as follows:

- Monitoring compliance with State and federal hazardous waste rules and regulations;
- Enforcement of State and federal hazardous waste management rules and regulations;
- Drafting rules on hazardous waste to maintain consistency with the federal regulatory program and in keeping with the State goal to provide an ample measure of protection for human health and the environment;
- Educating the program staff, other State personnel, the regulated community and the general public on regulatory requirements;
- Demonstrating to EPA the ability of the program to implement hazardous waste rules or regulations in the State in lieu of the federal government;
- Responding to inquiries from various industries and the general public (generator assistance); and
- Promoting waste minimization activities among the regulated community.

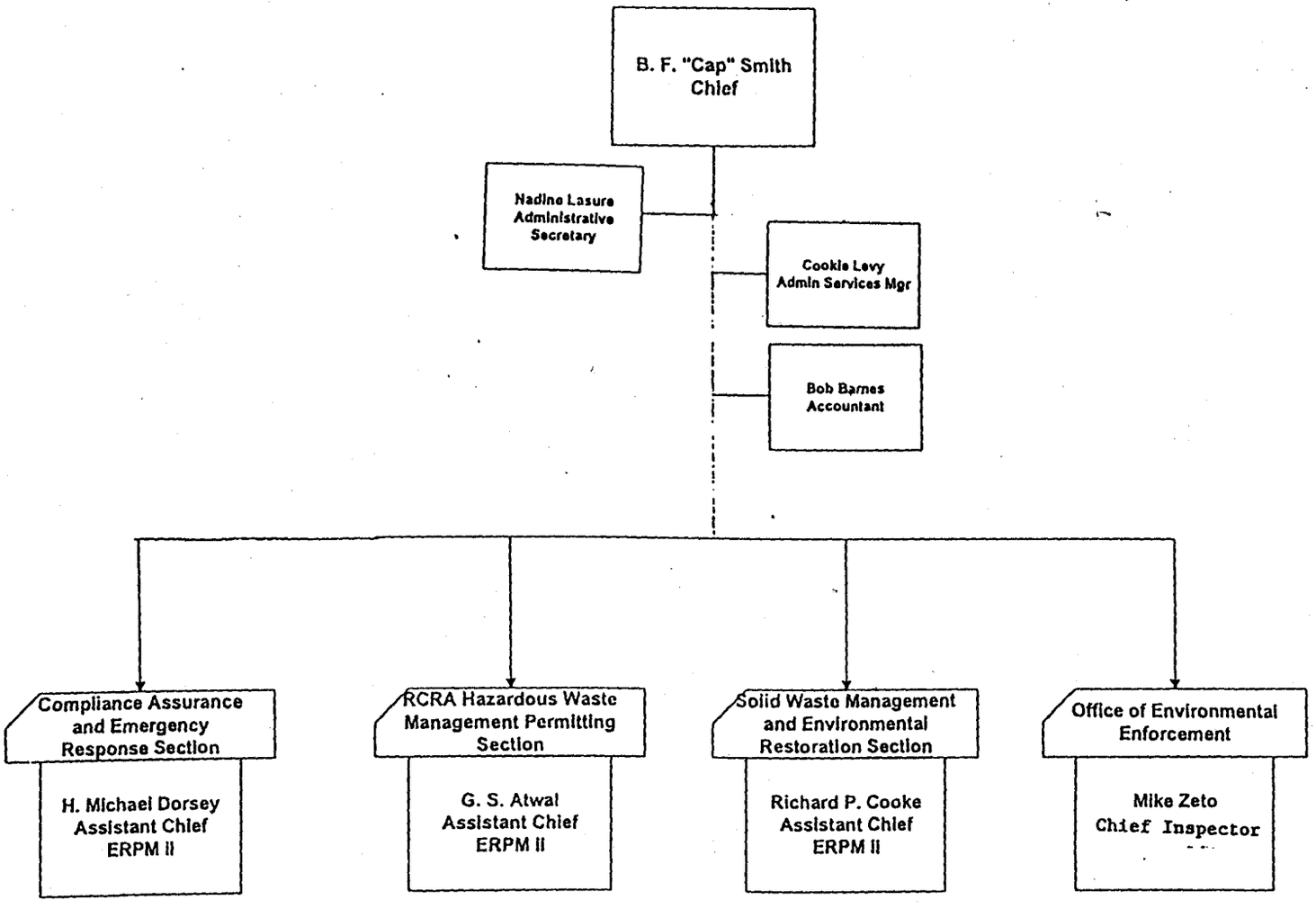
The State, via the CAERS, is responsible for adopting changes to maintain consistency with the federal regulatory program, and demonstrating to EPA the ability to implement the program. EPA is responsible for review and approval of requests for authorization of the program.

The OWM has responsibility for implementing and enforcing its program components as detailed in Table 3.1 as well as those functions assigned to it by the EPA/State Memorandum of Agreement (MOA) and State interagency agreements, Memoranda of Understanding (MOUs). In addition to implementing these functions, the OWM also makes recommendations on the identification and listing of hazardous waste to the Director of the WVDEP, recommends standards for groundwater protection to the Environmental Quality Board (EQB), develops permitting and enforcement strategies for recommendation to the Director of the WVDEP and coordinates with other agencies, administers and disburses EPA grant funds to other agencies and performs other duties as assigned by the Director of the WVDEP, or detailed in the State-EPA MOA or by any of the MOUs with other State HWP agencies. See Section X, Appendices C and D.

Division of Environmental Protection

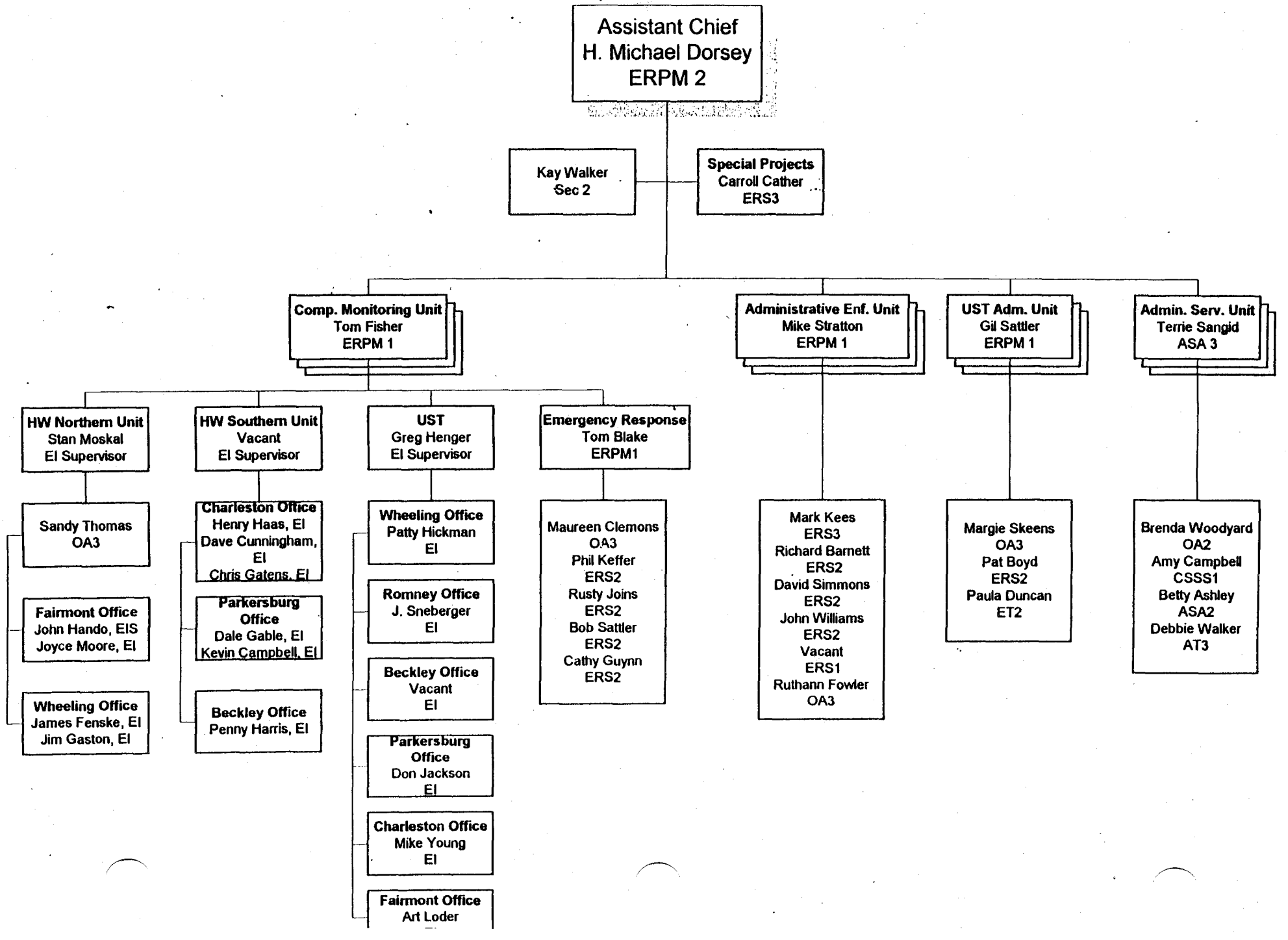


OFFICE of WASTE MANAGEMENT
ORGANIZATIONAL CHART



Compliance Assurance and Emergency Response Section

September 15, 1999



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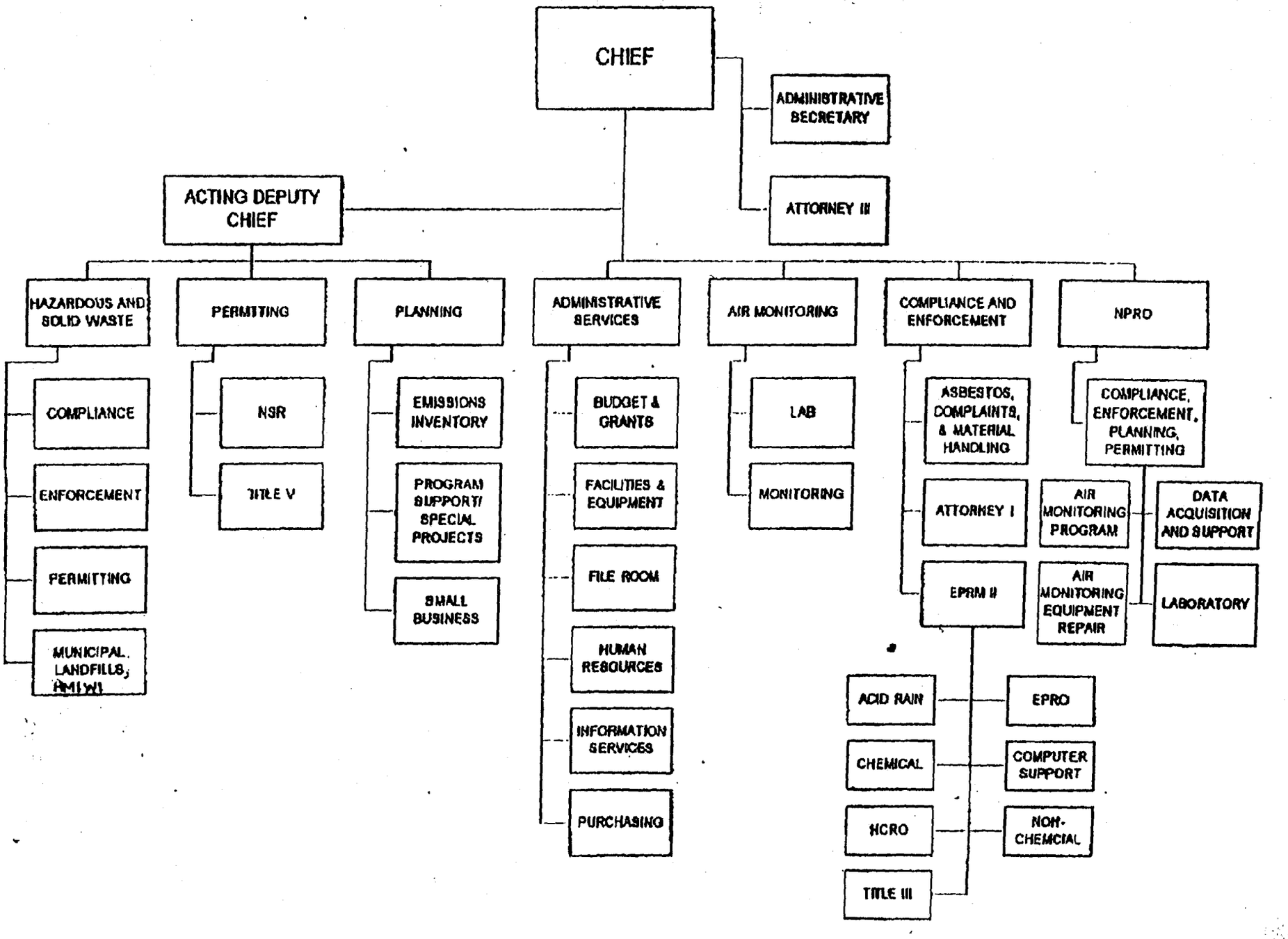
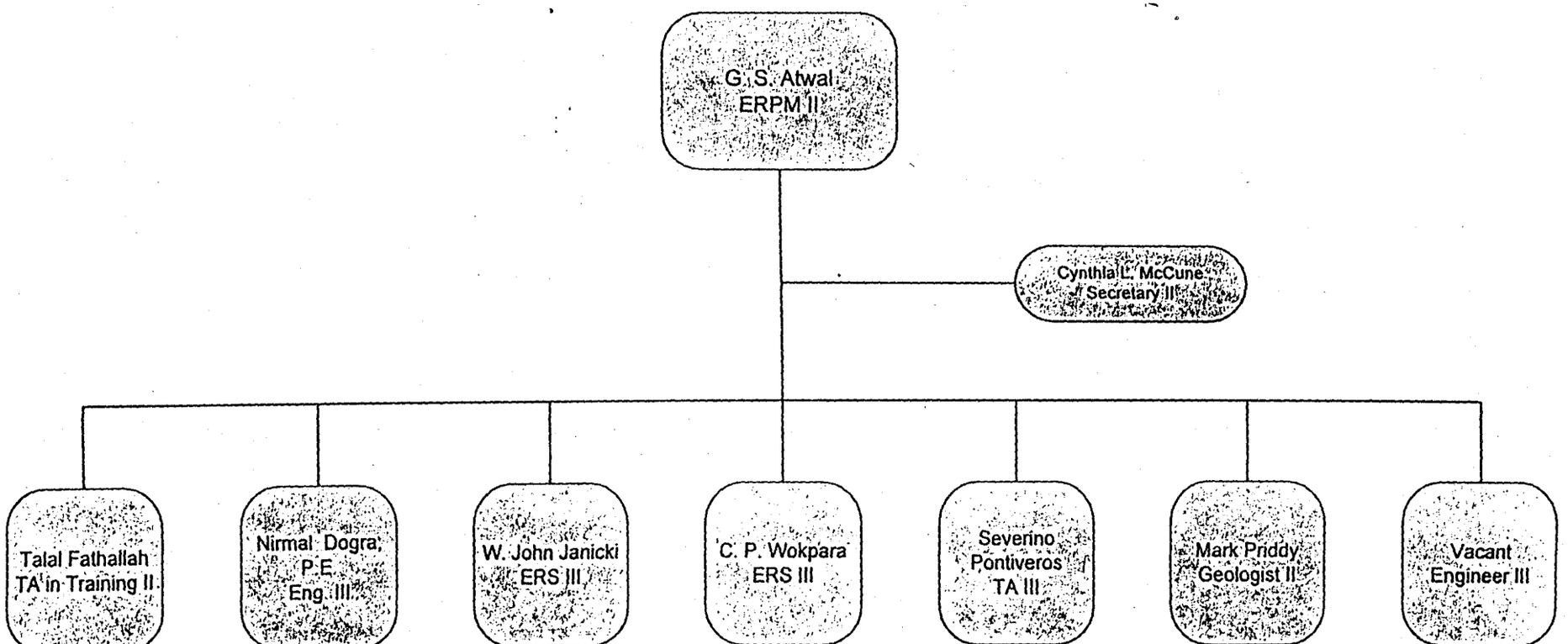


ORGANIZATIONAL CHART for RCRA HAZARDOUS WASTE MANAGEMENT PERMITTING SECTION



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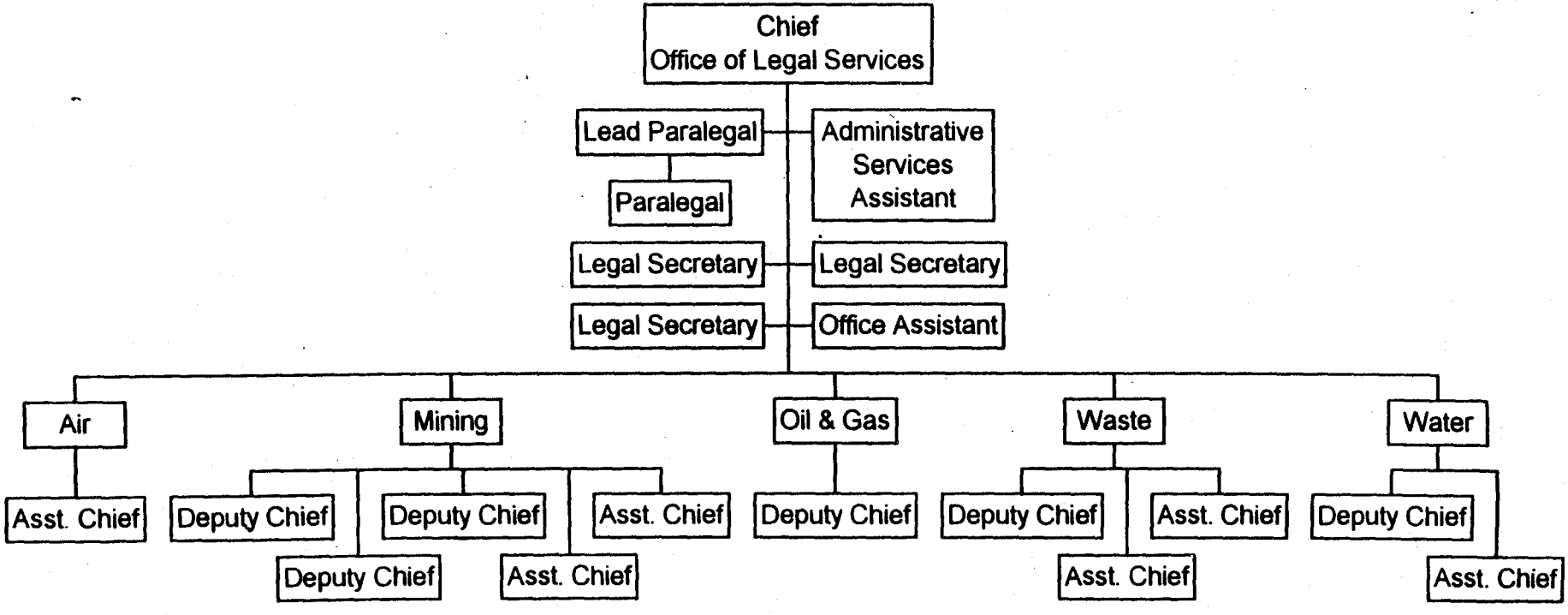
Office of Legal Services



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C. The Hazardous Waste Management Section (HWMS), Also Known As Permitting Section

The HWMS is responsible for administering the State's permitting program for hazardous waste treatment, storage and disposal facilities. The HWMS ensures that persons do not operate a treatment, storage or disposal facility unless they demonstrate the ability to operate the facility in a safe and effective manner. The various duties performed by the HWMS in support of the RCRA program are:

- To review permit applications and issue RCRA Permits;
- To issue, whenever necessary, Notices of Deficiency (NODs) that inform applicants of deficiencies in the permit applications;
- To conduct inspections of permitted sites and of sites seeking permits to verify the accuracy of information provided by the applicant;
- Data management and monthly update of permit data for the HWMS in the Resource Conservation and Recovery Information System (RCRIS); or RCRA INFO as assigned in the FY 2000 Grant Work plan;
- To provide technical assistance to CAERS, upon request.

Relative to permitting, the HWMS is, as mentioned, responsible for issuing RCRA Permits, including Emergency Permits, while EPA is responsible for implementing Corrective Action requirements under §3004(u) of RCRA and other requirements promulgated under the authority of the Hazardous and Solid Waste Amendments (HSWA) of 1984. In 1994, The State and EPA began working together to issue Corrective Action Permits for facilities within West Virginia. EPA has retained the authority and the State has assisted in work review activities.

D. Compliance Assurance and Emergency Response Section (CAERS)

The Compliance Assurance and Emergency Response Section (CAERS) is divided into two units: (1) the Compliance Monitoring Unit (CMU), which monitors compliance with RCRA requirements pertaining to generators of all classifications, certain requirements pertaining to hazardous waste transporters, TSDs, and (2) the Enforcement Unit (EU) which is responsible for enforcing hazardous waste rules (regulations) in the State, and for ensuring that regulated entities comply with regulatory and statutory requirements concerning hazardous waste management. This is accomplished by Environmental Inspectors from the CMU conducting periodic inspections at all permitted facilities as well as conducting inspections of hazardous waste generators and transporters. The Compliance Monitoring Unit investigates for non-compliance with hazardous waste management requirements when conducting field investigations of facilities within their jurisdiction and refers violations to the Enforcement Unit through the CAERS Assistant Chief. Complaints and reports of illegal activities are also investigated by the CMU. Upon referral of the violations from the CMU, the EU issues consent or unilateral administrative orders to the violator outlining the violations and requiring their correction. Also, at this point in the complaint investigation process, violations which are criminal are referred by the Assistant Chief of the CAERS to the USEPA, or to a suitable State Law Enforcement Agency.

1. Compliance Monitoring Unit (CMU)

Specific duties performed by the Compliance Monitoring Unit are:

- Conducting spill operations and maintenance inspections of permitted facilities;
- Conducting inspections of generators, transporters, and treatment, storage and disposal facilities to determine compliance with regulatory requirements and permitting requirements;
- Identifying non-notifiers;
- Investigating complaints or reports regarding hazardous waste activities;
- Developing expertise by performing inspections for non-delegated requirements promulgated by EPA under the Hazardous and Solid Waste Amendments of 1984 (HSWA);
- Overseeing groundwater extent of contamination and remediation projects;
- Responding to spills and monitoring spill clean-ups (often as a primary responder and, at other times, in a secondary capacity);

In addition to the nine RCRA Environmental Inspectors, the CAERS now has five staff persons formerly assigned to the Site Investigation and Response Section (SIR) to perform emergency response activities as needed. This ensures that the State is adequately covered

with respect to emergency response activities. When emergency response activities are related to spills or releases of hazardous waste or hazardous waste constituents, the CAERS is fully capable to perform all emergency response work.

Priorities for inspecting TSD facilities are based on an evaluation of the facilities' impact on public health and the environment. The highest priority is assigned to facilities that meet the following criteria:

- On-going enforcement actions or corrective action facilities;
- Demonstrated contamination of groundwater which is currently utilized as a source of drinking water: Although not technically a TSD facility, Vienna Cleaners, a dry cleaner located in Vienna, West Virginia, serves as an example of this situation. The facility has been placed on the Superfund list and, for a time, EPA replaced the City of Vienna's public drinking water supply, which had been contaminated with tetrachloroethylene, in part, due to releases attributed to the facility. Releases of hazardous waste to the environment can subject a generator to TSD regulations.
- Large industrial facilities which fall into at least two of the following categories:
  Facilities known to have contaminated groundwater and/or surface water;
  Facilities that store, treat or dispose of very large quantities of hazardous wastes;
  Facilities that have been targets of frequent enforcement actions.

Specific duties of other staff members of the CAERS include:

- Provision of relevant information to EPA for assignment of U.S. EPA ID numbers for generators, transporters, and treatment, storage and disposal facilities (TSDs), including collection of Notification of Hazardous Waste Activity Forms, which are, in turn, sent to EPA;
- Assignment of ID numbers to one time or provisional generators of hazardous wastes;
- Collection and generation of annual reports of hazardous waste activity and submission of Biennial Report data to EPA Region III;
- Data entry and management of compliance and enforcement data for the CMES into the Resource Conservation and Recovery Information System (RCRIS);
- State Rule development and RCRA Authorization activities;
- Grant performance tracking and State/EPA coordination.

General Duties of CAERS staff are:

- Response to inquiries from industries and the general public;
- Compliance Assistance

2. Enforcement Unit (EU)

The Enforcement Unit (EU) acts on the referred violations by issuing an administrative order. The orders may be unilateral orders or consent orders, which generally propose a penalty for violations. If an administrative order is not successful, a civil referral is made to the Office of Legal Services (OLS) through the Assistant Chief of CAERS. Violators may appeal unilateral orders to the Environmental Quality Board (EQB) within 30 days of issuance of the Order. The Enforcement personnel are assisted by attorneys from the OLS, who initiate all RCRA civil actions that are brought by the OWM. These attorneys also represent the OWM in all appeals brought before the EQB. In accordance with EPA's Enforcement Response Policy and the Hazardous Waste Non-Compliance Response Policy, the OWM takes timely and appropriate action against all persons in violation of the hazardous waste regulations, permit requirements, compliance schedules and all other program requirements. Also, attorneys within the OLS represent the WVDEP in overall environmental matters.

Specific duties performed by the Enforcement Unit (EU) in support of the RCRA program are as follows:

- Reviewing Inspection reports and initiating actions to bring violators into compliance; Such actions include informal actions, administrative orders, civil actions and criminal actions.
- preparing civil referrals for OLS to act upon;

- negotiating consent orders to resolve violations and determine acceptable monetary settlements as appropriate;
- reviewing Work Plans and reports;
- writing letters to approve, reject, or modify Work Plans;
- coordinate with Environmental Inspectors regarding Work Plans and reports such as:
  - work plans for site assessment;
  - groundwater contamination reports;
  - work Plans related to proposed remediation at a facility; and
  - progress reports for the on-going remediation processes.

EPA's authority to conduct inspections and take enforcement actions is not limited in the attached MOA. However, no local or other Federal agencies, or other State agencies, other than those identified in this PD perform duties of the OWM in lieu of WVDEP personnel. The division of enforcement responsibilities between the State and EPA are described in the Memorandum of Agreement (MOA) which accompanies this PD. Inter-agency MOUs are also provided. The State has the lead on enforcement of the authorized base program and, as a matter of State law, additional program elements in the State Rules for which EPA has not yet authorized the State. EPA has the lead on corrective action, land disposal restrictions (LDR), and other regulations adopted by EPA under HSWA authority. EPA also retains independent authority to conduct inspections and take enforcment action in all States. The DEP reserves the right to use State authority to achieve compliance and remediation at hazardous waste sites currently under-going Corrective Action via an EPA order. In the case of the LDR regulations, the State checks for compliance and, if violations are found, the DEP cites the violation under State authority.

3. Waste Minimization Program (WMP) and Special Projects

RCRA §3002, and State Rules that incorporate the applicable parts of 40 CFR by reference, require generators of hazardous waste to identify, in their annual reports, the efforts undertaken to reduce volume and toxicity of waste generated, as well as identify reductions in volume and toxicity that have actually been achieved. Moreover, generators are required to certify, on their manifests, that they have a waste reduction program in place to reduce the volume or toxicity of waste as far as economically possible. The Waste Minimization Program is an assistance program connected to the Compliance Assurance and Emergency Response Section (CAERS). The staff consists of one (1) Generator Assistance Person (GAP) and two (2) Waste Minimization Specialists (WMS) operating within the OWR. The WMS's are responsible for aiding generators in making volume and toxicity reductions as well as helping to maximize the opportunities available for recycling. The GAP works in Special Projects, a catch-all office that encompasses diverse areas such as the generator assistance program, RCRA authorization and rule adoption, development and interpretation. The GAP also encourages waste minimization among all sizes of hazardous waste generators and responds to inquiries from the public on hazardous waste rules or regulations, proper management of household hazardous waste; and the meaning and applicability of new state rules or federal regulations. The GAP also functions as a contact regarding data generated for the Biennial Reporting System (BRS).

E. DOH/DOT AND PSC

Division of Highways (DOH), Department of Transportation (DOT)

The West Virginia DOH, DOT has broad statewide responsibilities for highway construction and safety. The DOH also promulgates rules and performs compliance enforcement on hazardous waste transported over all state roadways, as well as other state and county roads. The DOH hazardous waste program is administered by the Safety Director. The DOH performs those functions listed in Table 3.5 of Section IV as well as those functions agreed to in the MOA and MOU. The DOH has the following specific responsibilities in support of the management program:

- Oversight of transportation on highways and all roadways within the state and delivery to a treatment, storage, disposal or recycling facility within the State including tracking of hazardous waste shipments via manifests, manifest processing, data management and data entry.

To accomplish the above functions, the Division of Highways (DOH) utilizes three inspectors to conduct safety inspections of transportation vehicles on roads and highways. These inspectors do not target hazardous waste transporters but inspect transporters during the performance of their normal duties. Also, the DOH uses three staff members to perform clerical duties related to RCRA inspection and manifest tracking activities. The CAERS may and does utilize its 9 Environmental Inspector staff to conduct inspections of transportation vehicles as needed and has designated Emergency Response personnel to respond to hazardous releases on roads and highways.

West Virginia Public Service Commission (PSC)

The PSC is the state 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. The PSC implements the hazardous waste transportation programs for rail shipment. It is also the State agency which regulates railroad transportation safety. The hazardous waste program for railway transportation is administered by the Director of the Railway Safety Division. The PSC performs those functions related to hazardous waste transportation by rail described in Section IV,D-6 of this document as well as those functions agreed to in the MOU. The PSC has statewide jurisdiction over hazardous waste transportation by rail, therefore, PSC railroad inspectors and PSC administrative staff-persons regulate rail transportation of hazardous waste and hazardous substances as part of their over all job duties. In addition, the CAERS utilizes its Environmental Inspector staff and designated Emergency Response personnel to respond to railroad transportation accidents which involve hazardous substances.

F. Office of Air Quality (OAQ)

The OAQ is the agency within the WVDEP which is tasked with preventing air pollution and protecting air quality as well as being vested with jurisdiction and responsibility over air emissions from hazardous waste TSD facilities. The OAQ has jurisdiction over facility performance standards of treatment devices (e.g., incinerators, boilers and industrial furnaces, open burning or subpart x units) and over other TSD facilities which have air emissions. The OAQ performs rulemaking, permitting, compliance monitoring inspections, and enforcement activities. The OAQ has established a Hazardous and Solid Waste Management Section (HSWS) which reports to the Chief of the OAQ. The OAQ performs the functions listed in Section IV, Table 3.4 as well as functions agreed to in the MOA and MOU. The class of hazardous waste activities regulated by the OAQ include combustion units (incinerators, boilers and industrial furnaces), thermal treatment units, miscellaneous units (carbon regeneration, open burning, small quantity burners), and air emissions standards from hazardous waste TSD facilities. The OAQ has statewide jurisdiction over the RCRA permitting, compliance monitoring and enforcement of these activities as well as permitting, compliance monitoring and enforcement of the Clean Air Act (CAA).

The Combustion Strategy is the plan of the OAQ with respect to the permitting and compliance tracking of hazardous waste incinerators, small quantity burners, state-regulated boilers and industrial furnaces (BIFs). West Virginia has 13 Hazardous Waste Combustion Facilities. The OAQ has representatives who monitor trial burns/stack test performance of these facilities.

G. Environmental Quality Board (EQB) and Air Quality Board (AQB)

The EQB has rulemaking authority to set State Water Quality Standards and appellate review authority for both the State's Water Pollution Control Act (NPDES) and hazardous waste programs, as well as other regulatory programs. The EQB consists of five members and has a staff that includes a secretary, clerk, legal counsel and technical advisor. Due to their appellate role in the State's NPDES program, members of the EQB must meet the conflict of interest requirements of 40 CFR §123.25(c). See W.Va. Code §22B-2-3.

The AQB is comprised of seven members. The AQB has appellate review authority of orders and permitting activities of the OAQ under the State's Clean Air Act and the hazardous waste program. The members of the AQB must meet the conflict of interest requirements of W.Va. Code §22B-2-1. The AQB shares staff with the EQB utilizing the same secretary, clerk, and legal counsel. The two boards are, otherwise, independent and no person is a member of both boards. Moreover, the technical assistant advises the EQB only.

H. Office of Legal Services (OLS)

The OLS is an office within the WVDEP which acts as in-house counsel to perform all legal services for the Director of the WVDEP, including, but not limited to, representing the Director, any Chief, the WVDEP, or any Office thereof in any administrative proceedings or any proceeding in any state or federal court. For a more detailed discussion, see W. Va. Code § 22-1-6(d)(7) and Page 3 of the OLS Statement. The organizational structure for the OLS is on page III-8. The Office of Air Quality (OAQ), within the WVDEP, also utilizes the services of the OLS. As a means to ensure adequate legal representation, the 1995 Legislature authorized the DEP to employ its own legal counsel for environmental matters rather than using the Attorney General's Office (W. Va. Code §22-1-6(d)(7)).

I. Coordination

Each agency coordinates its hazardous waste activities with the lead agency as well as with the other state HWP agencies as necessary. State interagency 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 permitting and enforcement activities.

The OWM has entered into MOUs with the PSC (Appendix C), and the DOH (Appendix D) pertaining to coordination of the hazardous waste program. The WVDEP, particularly the OWM, is the agency that other state agencies and EPA contact when an issue concerns one or more of the State agencies that have signed the MOU, or when it is unclear which state agency should be contacted regarding a specific matter or issue. The OWM has entered an MOU with the Office of Water Resources (OWR) regarding the Waste Minimization portion of the HWP.

The WVDEP's lead agency responsibilities also include contact between the State and EPA. Coordination efforts at this level serve to inform 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 WVDEP also acts 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 WVDEP coordinates State action necessary to secure federal funds, and oversees subsequent distribution of those funds to State agencies involved in the hazardous waste program. The WVDEP also coordinates with other states in matters relating to hazardous waste management.

CAERS AND HWMS COORDINATION

Within the OWM, the CAERS and the HWMS work together on issues involving contamination of soils and groundwater, and help ensure that groundwater protection requirements are met at RCRA facilities. Although the Office of Water Resources (OWR) is the lead agency for enforcement of the West Virginia Groundwater Protection Act, the lead state agency for groundwater compliance at RCRA facilities remains is the OWM. To help insure that the groundwater protection requirements are met, CMU Environmental Inspectors conduct Comprehensive Monitoring Evaluation (CME) inspections and Operation and Maintenance (O&M) inspections at land disposal facilities. Land disposal facilities that need periodic monitoring, and generators of hazardous waste who may need remedial action at their facilities because of the release of hazardous constituents, fall under the CAERS and the HWMS of the OWM. The Enforcement Unit and the HWMS staff also provide technical support to the CAERS for groundwater investigations and remedial actions at hazardous waste generator facilities. In some instances, CAERS personnel are accompanied by WVDEP's OWR Groundwater staff on site visits. In addition, the OWR conducts in-house tracking of

groundwater projects within the State to ensure consistency with the State Groundwater Protection Act.

As a result of a discharge or release of hazardous waste, a site owner or operator may be required by the CAERS to take action. This could include a requirement that the responsible party characterize the nature and extent of contamination at the site, develop a plan for remediation, and/or implement a remedial plan. The authority for plan submittal is provided in Chapter 22, Article 18, Section 14 of the West Virginia Code. The CAERS and the HWMS may assist in such cases by reviewing required reports such as:

- Work Plans for site assessment;
- Groundwater contamination reports;
- Work Plans related to proposed remediation at a facility; and
- Progress reports for on-going remediation processes.

Members of the CAERS and the HWMS staff review various reports for technical sufficiency. Inadequate reports are returned for revisions and corrections. The State uses the State Groundwater Protection Act and the RCRA Technical Enforcement Guidance Document (TEGD) as guidance in managing groundwater projects. Additional guidance is provided by EPA documents supporting the RCRA Corrective Action Program. The Office of Environmental Remediation has taken on some of the duties of plan review and approval when the plans are voluntarily submitted or when the site has been accepted as a VDDR candidate. The WVDEP has submitted to Region III EPA an agency-wide Quality Management Plan (QMP) that describes the procedures and processes for assuring that data, collected and analyzed by and for WVDEP, is of sufficient quality to support appropriate decisions on environmental matters. A copy of the QMP is found in Section X.

SECTION IV

STAFFING AND FUNDING RESOURCES

A. Description of Staffing

The WVDEP has a total of eight hundred forty nine (849) employees. As shown in the organizational chart on page III-3, the WVDEP is divided into the OLS, OWR, OWM, the OAQ, and other environmental protection offices. The agencies within the WVDEP which enforce RCRA regulations are the OWM and the OAQ. The OWM has a total of one hundred twenty three (123) employees. Of these employees, thirty five (35) work on Resource Conservation and Recovery Act (RCRA) related projects. Correspondingly, the OAQ has a total of ninety eight (98) employees: of these OAQ employees, four (4) employees comprise the Hazardous and Solid Waste Section (HSWS) and work on RCRA. A summary of job responsibilities for the four employees follows. State Agencies outside of the WVDEP that enforce aspects of RCRA are the Department of Transportation's Division of Highways (DOH) and the Public Service Commission (PSC). A total of six thousand seven hundred twenty eight (6,728) employees work for the DOH and two hundred forty two (242) employees work for the PSC. At the DOH, ten (10) employees work as safety inspectors along with three (3) clerical staff members. Three of the ten inspectors conduct safety inspections of transportation vehicles and are currently RCRA funded in the amount of $10,000 dollars. The PSC uses eight (8) railroad inspectors and employs two (2) administrative staff persons. Additionally, the OWM uses five (5) staff persons within the CAERS to perform emergency response activities. When the emergency response activities are related to spills or releases of hazardous waste or hazardous waste constituents, the CAERS ensures that the emergency response work is performed, utilizing Compliance Monitoring Unit personnel as needed.

B. Overall Changes in Existing Program Resources

The size of the regulated community has changed from the time of West Virginia's initial HWP authorization. At the time of base authorization, the HWP, or Program, was regulating approximately sixty four (64) generators, twelve (12) stand-alone transporters and thirty nine (39) Treatment, Storage and Disposal (TSD) facilities. Currently, the Program is regulating over five thousand (5,000) generators; one hundred and fifteen (115) large generators, one thousand three hundred seventy five (1,375) small quantity generators and three thousand nine hundred and fifty (3,950) conditionally exempt small quantity generators, in addition to twenty eight (28) stand-alone transporters and eighteen (18) operating Treatment, Storage and Disposal (TSD) facilities. Five additional TSD facilities are regulated under post-closure care permits. The Program has expanded and become more efficient to meet the needs of an expanded regulated community. This growth in the regulated universe is clearly evident based on generator numbers alone.

For example, in the original base PD for the year 1985, the WVDNR (now the WVDEP) was scheduled to receive $790,700.00 dollars from EPA to operate the Program; the State contribution was estimated at $263,600.00. For fiscal year 1986, WVDNR was scheduled to receive $1,069,500.00 from EPA; the State contribution was estimated at $356,500.00.

For fiscal year 1999, the WVDEP received $1,626,903 from EPA to operate the Program; the State contribution was $632,684. The increased funding from the 1985 base program authorization period has been, in large part, due to more staff and technology required to monitor the increased hazardous waste universe and the expansion in the scope of regulated areas. Examples of added staff are more permit writers, enforcement personnel, and a generator assistance person sharing waste minimization duties with two OWR representatives. Increased technology, through computerization, has necessitated a RCRIS implementer to record and transmit Program data to Region III EPA. Not only has the Program expanded, the USEPA documentation requirements have grown proportionally. West Virginia's funding resources have grown since 1985. Table C-1 depicts the change in funding from 1985 through 2001 (projected). Increased regulatory oversight over areas such as the land disposal restrictions, used oil regulations and universal waste regulations has placed a greater burden on State funding resources. The OWM continues to fulfill grant commitments and meet deadlines in submitting relevant biennial reports to EPA. Updates on permitting and enforcement activities are also submitted to EPA through the RCRIS database. The subsections which follow address the

overall estimated costs as well as examine the staffing and funding resources for each of the major Divisions or Sections which administer the Program.

C. Itemization of Estimated Costs and Sources of Funding

Table C-1 provides a listing of Federal and State funding for the Resource Conservation and Recovery Act Program (RCRA). The majority of these resources (approximately 98%) are dedicated to the federally-required portion of the Program. [The funding for the program during the next two years appears secure. In 1996, the agency increased the cost of RCRA Permit activities through additional fees upon TSDs. This permit fee increase was the first fee increase since the inception of the Program.] Federal funding accounts for approximately 70 percent of the budgeted RCRA grant fund while the State covers the remaining 30 percent. The various items that are funded by the RCRA grant are shown in Table C-1. There are no specific limitations or restrictions on State or Federal funding other than the requirement that the State meet its grant commitments. In addition to standard funding, West Virginia has submitted proposals when EPA has made supplemental funds available. As previously mentioned, the expanded universe and increased coverage areas of the HWP do pose a burden to the WVDEP to maintain acceptable performance standards. The WVDEP has, however, continued to meet acceptable performance standards.

Actual costs for West Virginia to operate the HWP during federal fiscal year (FY) 1999 were as follows:

1. For FY 1999, the WVDEP received federal assistance for core activities (base grant activities) in the amount of $1,356,650 from EPA. An additional $270,253 was awarded as a grant supplement. Total HWP funding for FY 1999 was $2,259,587 ($1,626,903 federal funds and $632,684 state funds).

Actual costs for West Virginia to operate the HWP during federal fiscal year (FY) 2000 is as follows:

2. For FY 2000, the WVDEP has been awarded federal assistance from EPA for core activities in the amount of $1,701,650. The State match fund is $729,279, and the Total HWP funding is $2,430,929 ($1,701,650 federal funds and $729,279 state funds).

Projected costs for West Virginia to operate the HWP during federal fiscal year (FY) 2001 is as follows:

3. For FY 2001, the WVDEP is projected to receive federal assistance for core activities in the amount of $1,786,732. The projected State match fund is $765,743. Total program funding is projected at $2,552,475.

RCRA PROGRAM EXPENDITURES
BY YEAR

Table C-1

Expenditures 1985	RCRA Grants	Other Funds	Comments
$ 1,054,300	790,700	263,600	

Expenditures 1986	RCRA Grants	Other Funds	Comments
$ 1,426,500	1,069,500	356,500	

Expenditures 1999	RCRA Grants	Other Funds	Comments
$ 2,259,587	1,626,903	632,684	Federal 72%: State 28%
			1,356,650 Federal Base Grant Allocation 270,253 Additional Funds

Expenditures 2000	RCRA Grants	Other Funds	Comments
$2,430,929	1,701,650	729,279	Federal 70%: State 30%
			1,551,650 Federal Base Grant Allocation 270,253 Additional Funds

Projected Expenditure 2001 (Proposed Allocation)	RCRA Grants	Other Funds	Comments
$ 2,552,475	1,786,732	765,743	Federal 70%:State 30%
			1,636,732 Federal Base Grant Allocation(Proposed) 150,000 Additional Funds

D. Staffing and Funding by Office/Section

The three State agencies that administer the State HWP are WVDEP, DOH, and PSC. Each agency has personnel designated to participate in the State HWP. Each agency's staff is managed by that agency and the program is coordinated by WVDEP in its role as lead agency. The following description of the HWP staffing is subdivided by agency and Office. The WVDEP is divided into two Sections for the HWP. The interrelationship of the two Sections is shown in the WVDEP Organizational Chart (See Section III)

Current WV Hazardous Waste Staffing
(Federal/State Funded Full Time Equivalent Positions per State Agency)

Division of Environmental Protection This includes work shared among the WV Office of Waste Mgmt., the Office of Air Quality, the Office of Water Resources, and the Office of Legal Services	Division of Highways	Public Service Commision
39	3*	1*

* Rounded to nearest whole number.

WVDEP/OWM Staffing

The Hazardous Waste Management Section (HWMS) and the Compliance Assurance and Emergency Response Section (CAERS) of the State HWP are located in the OWM of the WVDEP; whereas, the OAQ oversees the air emissions of RCRA units, including open burning and treatment units. The HWMS contains a Permitting Unit. The CAERS is subdivided into four units:
(1) Compliance Monitoring Unit
(2) Administrative Enforcement Unit
(3) UST Administrative Unit
(4) Administrative Services Unit
The HWMS and CAERS together have a total authorized staff of thirty (35) people participating in the HWP directly or indirectly. The breakdown of OWM staff is given in the Organizational Chart for the OWM in Section III.

1. The Hazardous Waste Management Section (HWMS) or Permitting Section

The addition of the revised RCRA Clusters to the program will have little effect on the Permitting Section and will add little additional work for the Compliance Assurance and Emergency Response Section and OAQ Enforcement. In fact, the State is performing the work, even without RCRA authorization, as the equivalent rules have been added to the State Rule packages.

Overhead costs are entered as a total amount for the entire WVDEP since it is difficult to break down costs by individual office or section.

As seen in Table D-1, the Permitting Section is lead by an Assistant Chief who supervises a total of six employees, including one permit chemist, three permit engineers, and one geologist. Clerical support is provided by the Permitting Section secretary. Overall supervision is provided by the OWM Chief. The responsibilities for each of these positions are outlined in Table D-1.

There are no major procedural changes between the old program and the new program. Both the OWM and OAQ will be regulating miscellaneous units managing hazardous waste. The permit writers have been trained in the issuance of RCRA and HSWA permits; and additional training shall be provided, as needed, to enable the technical review and approval required for miscellaneous units. RCRA technical training is an ongoing activity within the HWMS. It is anticipated that EPA will either fund or provide personnel to satisfy any additional training requirements of the HWMS. The permit process has been depicted on a flow chart (Section

V, page 28-1) and described in some detail. There have been no major procedural changes to the Permit process itself from 1985.

Table D-1

HWMS or Permitting Section		
1	Assistant Chief	Management, program development, policy and administration. Management of HW TSDF Permit program, technical asst., and permit program development.
3	Permit Engineer	Technical and administrative review of TSDF permit applications, technical review of GWM plans/results, technical assistance to other HWP sections.
1	Permit Geologist	Hydro geologic and administrative review of TSDF permit applications, geologic/Hydro geologic assistance to staff engineers and other HWP staff.
1	Permit Chemist	HW listings review, application review, chemistry assistance to other Branch staff.
1	Secretary	Clerical

2. Compliance Assurance and Emergency Response Section (CAERS)

As seen in Table D-2, the CAERS has a total staff of twenty eight (28) full time hazardous waste employees including one Secretary, three Office Assistants and two Administrative Assistants devoted to hazardous waste activities. This Section deals with compliance and enforcement of regulations at permitted facilities and also with all hazardous waste generators and transporters. The CAERS is lead by an Assistant Chief and overall supervision is provided by the OWM Chief. The responsibilities for these positions are outlined in Table D-2.

Additionally, apart from the staff of 28, the CAERS receives support from the Office of Legal Services (OLS) and the Division of Natural Resources (DNR):

- Attorneys from the OLS review civil cases for the HWP.
- Conservation Officers from the DNR assist Environmental Inspectors, as needed, to gain entry to facilities and to enforce criminal provisions.

The size of the regulated community, as seen in Table 12, Section VIII, has increased to five thousand four hundred and forty (5,440) generators of hazardous waste, a marked increase from the sixty four (64) handlers of hazardous waste listed at the time of base program authorization in 1985. In response, the expertise and staff size has grown to meet the challenge. The agency is fulfilling the majority of grant commitments and meeting deadlines in submitting the relevant reports to EPA.

Table D-2

1	Assistant Chief	Management of CAER Section actions, enforcement policy review, and assistance to other Section staff.
1	Enforcement Unit Manager	Management of enforcement actions, enforcement policy review, and delegation of cases to enforcement unit staff, program development
4	Environmental Resource Specialists	Enforcement case development, liaison with OLS, field and file enforcement QA, compliance evaluation,
1	Compliance Monitoring Unit Manager	Management of field investigative force, oversee hazardous waste and UST supervisors, responsible for compliance program development and inspection consistency.
2	Environmental Inspector Supervisors (Northern and Southern Units)	Management of field investigative force, tracking and scheduling inspections, sampling QA, compliance evaluation, program development.
9	Environmental Inspectors	CEIs, sampling, inspection reporting, complaint and violation investigation, assistance on field permit application review.
2	Administrative Assistants	Administration, program development, etc.
1 3	Secretary Office Assistants	Clerical Clerical
1	Environmental Inspector Specialists	Specializes in OAQ issues that affect the program, and other duties as described @ Environmental Inspector position.

1	Special Projects	Responsible for regulatory development, waste policy, de-listing determinations, RCRA program authorization, generator assistance.
1	Accounting Tech	Responsible for processing and reconciling purchase transactions and financial information.
1	Computer Support Specialist	Responsible for RCRIS, BRS data management.

The HWMS contains the largest technical staff devoted to the program. The primary duties of the HWMS 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 Permitting Section is composed of three (3) staff engineers, one (1) chemist, one (1) geologist and a Section Manager (administrator).

The CAERS staff consists of an Assistant Chief, one Compliance Monitoring Unit Manager, one Enforcement Unit Manager, two (2) Inspector Supervisors and nine (9) Inspectors, one Inspector Specialist, as well as one secretary, and one computer support specialist. The Section's responsibilities include performing Compliance Evaluation Inspections (CEIs), sampling of wastes and processes, and conducting field review of TSD permit applications, as well as ensuring compliance with the HWP through administrative consent orders or civil and/or criminal referrals. The CEIs are performed at generators, transporters and TSD facilities for which WVDEP has administrative responsibility.

The Enforcement Unit consists of an Enforcement Unit Manager, four administrative enforcement staff assigned to RCRA enforcement and an office assistant. The four enforcement unit staffers are responsible for initiating an enforcement action through a written inspection or complaint report, case development, case management, tracking and follow-up to OWM enforcement actions to ensure the violator's return to compliance, if possible, and obtain a consistent, appropriate future deterrence through penalties. The enforcement activities performed on behalf of the Underground Storage Tank Administrative Unit are funded separately from the funding indicated in this Program Description.

The two Sections, (CAERS and HWMS), are assisted in fulfilling HWP responsibilities by several persons from outside the Sections. They include two OWM Public Information Representatives, and three OLS Attorneys. As indicated, the CAERS provides one secretary to perform clerical duties necessary to the program, and three Office Assistants and one computer support specialist. The computer support specialist is tasked with maintaining the RCRIS and RCRA/INFO database which is used to update EPA regarding all State RCRA actions. One office assistant acts as a data manager and assigns a State-Specific EPA identification number to State generator/TSD/Transporters upon their request when they have provided the CAERS with all needed information.

3. OAQ Staffing

OAQ has a designated Hazardous and Solid Waste Section (HSWS) as described in this Section and depicted in Table 3.4.

The HSWS is staffed by an Assistant Chief who reports directly to the Deputy Chief of the OAQ, and by three (3) engineers. The performance of permitting, compliance monitoring and enforcement activities by the OAQ's HSWS regarding RCRA air emissions will place a greater burden on OAQ staff and resources. To meet that burden, OAQ is adding two enforcement engineers and one secretary to implement and enforce State and Federal rules on RCRA air emissions standards.

The Assistant Chief's duties include:

- perform administration and professional work in planning, organizing, directing, controlling, and supervising all activities of the Hazardous Waste Management Air Program for permitting, compliance monitoring and enforcement.
- coordination of the program activities with both USEPA, OWM, and other participating agencies,
- preparation of program reports including budget preparation and grant requests, program development,
- assistance in the preparation of the State program authorization,
- modification and review of State and Federal regulations,
- supervision of day-to-day program commitments such as TSD facility permit application processing and review, along with compliance monitoring and enforcement.

3.1 OAQ Permitting

The evaluation of permits for combustion units is a lengthy process that demands considerable expertise. The OAQ uses EPA Risk Assessment Guidance documents to facilitate permit evaluations. Risk Assessment (RA) evaluations are relatively new permit requirements for combustion, treatment/miscellaneous units to ensure that the units adequately protect human health and the environment. The OAQ utilizes the recommended EPA lists of qualitative factors to determine if a comprehensive Site Specific Risk Assessment (SSRA) is required in a particular permit evaluation. The SSRA, if needed, will be performed either during the permitting process or under an enforceable schedule contained in the permit, depending on the complexity of the site and the availability of all required information. One of the top priorities of OAQ permitting is to employ the process of application renewal of existing combustion facilities as an opportunity to bring those facilities under more comprehensive environmental controls.

The review of facility permit applications for completeness and technical evaluations includes the following permit engineer staff duties:

- the performance of an engineering evaluation of facilities' construction design and operational control parameters;
- evaluation of site-specific combustion risk assessments;
- interpret related air modeling;
- observation of compliance test/trial burn test-performance and evaluation of test results;
- prepare draft and final permits;
- recommend approval or denial of applications; and
- act as technical assistant concerning the 45 CSR 25 rule.

OAQ will use EPA contractors' expertise as available to perform technical reviews of full risk assessment evaluations conducted on combustion and miscellaneous units. Additionally, OAQ staff will expand their own knowledge and expertise through training and participation in seminars and workshops. These activities are intended to achieve successful implementation of the additional requirements for the combustion strategy portion of the HWP. OAQ's HWMS personnel routinely attend EPA sponsored training programs.

The following are OAQ performance expectations in implementing the Federal rules adopted by 45 CSR 25:

Date	Rule
4/27/94	• 40 CFR Part 266 Subpart H -"Hazardous Waste Burned in Boilers and Industrial Furnaces"
	• 40 CFR Part 264 Subpart X - "Miscellaneous Units" (Open Burning ... etc.)
	• 40 CFR Parts 264, 265 & 270 Subpart AA - "Air Emission Standards for Process Vents"
	• 40 CFR Parts 264, 265 & 270 Subpart BB - "Air Emission Standards for Equipment Leaks"
	• 40 CFR 279 - "Standards for Used Oil Burners Who Burn off-Specification Used Oil for Energy Recovery"
6/1/97	• 40 CFR Part 264 - "Expanded Public Participation for Hazardous Waste Combustion Units"
	• 40 CFR Parts 264 & 265 Subpart CC - "Organic Air Emission Standards for Tanks, Surface Impoundments and Containers" promulgated on November 25, 1996 and subsequent amended rule. This rule requires that facilities submit an application and be permitted. RCRIS data indicates that approximately 100 Large Quantity Generators exist that may be subject to this rule; therefore additional compliance monitoring and enforcement work is envisioned.

3.2 OAQ Compliance Monitoring and Enforcement

OAQ work activities ensure that facilities comply with Federal and State rules, and with existing permit conditions. OAQ coordinates with the USEPA on combustion issues and works with the OWM to enforce general state requirements and standards under 33 CSR 20. This coordination ensures consistency and avoids duplication of enforcement efforts. The following are OAQ's compliance monitoring and enforcement activities:

(a) conduct two (2) inspections (one in-depth and one or more follow-up inspections) each year. Follow-up inspections may be increased if a facility needs to be more closely monitored;
(b) conduct field review of permit applications;
(c) investigate complaints and referral information from other offices to investigate applicability of 45 CSR 25 to suspected facility violators;
(d) continue the sampling and analysis of the hazardous waste combustion units to verify compliance with Federal and State rules and facility permits. The OAQ regularly monitors these four (4) facilities: (1) Rhone Poulenc - boilers, (2) Cytec, Willow Island - 2 incinerators, (3) DuPont, Belle - boilers, and (4) OSi Specialties - incinerators.
(e) prepare enforcement case tracking system and case development;
(f) investigate violations;
(g) calculate administrative consent orders to implement 45 CSR 25; and
(h) prepare civil and/or criminal referrals.

On occasion, multimedia enforcement actions occur requiring coordination between representatives of OWM and OAQ on RCRA air quality issues that have a direct impact on RCRA waste issues. At times, joint inspections and joint enforcement actions take place requiring close coordination of efforts between OWM and OAQ. Compliance and permitting personnel representing the two agencies routinely pose questions on RCRA subjects to the other agency, relying on their mutual expertise. Activities related to RCRA are independently entered into RCRIS. Violations of air quality standards are the responsibility of OAQ or USEPA in its oversight capacity. In fact, the USEPA provides combustion training to OAQ.

Legal services are currently provided to the OAQ by a full-time OAQ staff attorney and, on an ad-hoc basis, from an OLS attorney assigned to the WVDEP for defense of administrative appeals and prosecution of civil enforcement actions.

The following table lists facilities with incinerators, boilers and industrial furnaces (BIFs) which are subject to increased permitting and compliance tracking activities by OAQ to evaluate their compliance with 40 CFR Parts 264, 265, 270 (Subpart AA, BB and CC):

FACILITY NAME	LOCATION	EPA ID NO.	TYPES & (# of Units)	STATUS
a. Boilers and Industrial Furnaces				
Rhone Poulenc	Institute, WV	WVD005005509	B (2), BB	IS
Union Carbide	S. Charleston, WV	WVD005005483	B (1), BB	IS
b. Incinerators				
OSI Specialties**	Sistersville, WV	WVD004325353	I (1), BB	P
Bayer, Inc**	New Martins., WV	WVD056866312	I (1), BB	P
Cytec**	Willow Island, WV	WVD004341491	I (1), BB	P
DuPont**	Parkersburg, WV	WVD045875291	I (1), BB	P
c. Small Quantity Burners				
Kwik Lube Inc.	Huntington, WV	WVD988774675	SQB	
Monongahela Ft. Mar	Fort Martin Station	WVD980555007	SQB	
Monongahela Plea.	Pleasant Station	WVD980552509	SQB	
Monongahela Har.	Harrison Station	WVD095324059	SQB	
d. Thermal Treatment Units				
ABL/Alliant*	Rocket Center, WV	WV0170023691	X (OB)	IS

e. Facilities Subject to Air Emission Standards

OAQ has identified ten (10) facilities (listed below) subject on Subpart CC rules. OAQ anticipates a total of sixty (60) facilities, upon completion of Subpart CC site inspections.

Bayer	New Martins., WV	WVD056866312	CC (TK)
Cytec	Willow Island, WV	WVD004341491	CC (TK)
Dupont	Belle, WV	WVD005012851	CC (TK)
DuPont	Washingtonworks. WV	WVD045875291	CC (TK)
G. E. Specialty	Morgantown, WV	WVD980552384	CC (TK)
Rhone Poulenc	Institute, WV	WVD039990965	CC (TK)
NewChem Specialty	Newel, WV	WVD981945215	CC (TK)
Safety Kleen Corp.	Wheeling, WV	WVD981034101	CC (TK)
Union Carbide	S. Charleston, WV	WVD005005483	CC (TK)
WV Air Center	Bridgeport, WV	WVD988776852	CC (TK)

NOTE: *= Expected to submit Part B application. X = Subpart X - Open Burning
**= Permit renewal P = Permitted

I	=	Incinerator	IS	=	Interim Status
B	=	Boilers	SQB	=	Small Quantity Burners
IF	=	Industrial Furnaces	BB	=	Air Emission Std. For Equip. Leaks
AA	=	Air Emission Std for Process Vents	OB	=	Open Burning
CC	=	Air Emission Standard for Tanks, Surface Impoundments and Containers	TK	=	Tank

3.3 Program Development

40 CFR Parts 63, 261 and 270 - "Hazardous waste combustors" is the rule to be incorporated in Revision 2 State Authorization packages. OAQ will continue to assist OWM in the development of the RCRA State Authorization, Revision 2 package.

USEPA projects that the WVDEP will receive program authorization for hazardous waste rules (33 CSR 20 and 45 CSR 25) during year 1999. Adequate program funding is therefore required to properly implement both Federal and State rules. The grant allocation continues to remain adequate to run this part of the State Hazardous Waste Management Program efficiently and closely monitor all combustion facilities, thermal treatment facilities, (Open Burning Subpart X) and other air-emitting hazardous waste facilities.

3.4 Resource Requirements/Financial Expenditures For FY 98

In FY 1998, a total of 4.40 staff-years of resources were used by OAQ for Hazardous Waste Management Air Program activities. Approximately 2.00 staff-years were utilized for permitting, and 2.00 staff-years were allotted to compliance monitoring and enforcement assessments. Program development required 0.01 staff-years. Program administration training and reporting accounted for 0.30 staff-years.

Table 3.4
Office of Air Quality

Number in Position	Position	Description of Duties
1	Assistant Chief	Management, program development, policy review, management of permitting, compliance monitoring and enforcement program, and assistance to other OAQ program, state and local agencies. Management of field investigative force, tracking and scheduling inspections, and compliance evaluation.
3	Permit Engineers	Technical and administrative review of TSDF permit applications, technical review of design, operating parameters, trial burn plans and results, review the site-specific risk assessment for hazardous waste combustion units including air modeling and air emission inventory, and technical assistance to other OAQ sections.
2	Enforcement Engineers	Enforcement case development, liaison with OLS, field and file enforcement investigation, enforcement case tracking. CEIs, inspection reporting, complaint and violation investigation.
1	Secretary	Clerical.

3.5 DOH Staffing

The Enforcement Division of the DOH is responsible for the portion of the State HWP regulating the transportation of hazardous waste on roads and highways, and is also responsible for three other Enforcement Division programs. An Assistant Director/State Safety Officer of the Enforcement Division directs HWP activities for the DOH. Table 3.5 shows that, during a typical fiscal year, six DOH employees participate in HWP activities so that 2.64 full time employees (FTEs) are utilized to enforce the HWP during the year.

WV Division of Highways Staffing
Enforcement Division - HWP

Table 3.5

Position	No. Of FTEs	Duties
Safety Director (1)	0.33	DOH-HWP 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 (6) Persons	2.64 FTEs	

3.6 PSC Staffing

PSC responsibility, in the State HWP, is the regulation of the transportation of hazardous wastes by rail in the State. The PSC Railway Safety Section performs its' State HWP functions with a total staff of eleven (11) people. The PSC uses four (4) track inspectors and four (4) car inspectors, which leaves three (3) administrative staff persons. Some duties of the eight (8) inspectors are to inspect and track railroad transport vehicles to ensure against accidental releases of hazardous materials, inadequate manifesting of wastes, and inadequate placarding, packaging, and vehicular containment. Inspectors also look for Tracking documents and monitor compliance of rules pertaining to used oil, universal wastes and military munitions. Enforcement of PSC regulations concerning railway transport of hazardous wastes is, of course, performed by these inspectors, under the supervision of the Manager for Railway Safety. The Section estimates that it provides the equivalent of 0.5 full-time employee (FTE) to the HWP during a year.

6. Environmental Quality Board Staffing

The EQB is an administrative Board within the Bureau of the Environment consisting of five (5) board members. The EQB employs a technical assistant, legal counsel and a secretary, and a clerk. The latter three positions also work for the AQB.

7. Air Quality Board Staffing

The AQB is an administrative Board within the Bureau of the Environment consisting of seven (7) board members. The AQB employs a secretary, a clerk and legal counsel that also perform work for the EQB.

Note: Although the EQB and AQB share some administative staff, the two boards are independent and have no member serving on both boards.

8. Costs and Funding of State HWP

This subsection describes the current and projected State HWP cost and funding, with anticipated sources of funding. Funding and cost estimates are based upon past experience during operation of program activities under base authorization. Cost and projected funding estimates are provided for Federal FY 2000 and 2001.

Past HWP Costs

Past, current and projected HWP costs are provided in Section IV, Table C-1. The total costs for implementing the authorized program were $1,054,300 for FY 1985 and $1,426,500 for FY 1986, when the base program was authorized. The average costs for hearings and appeals before the Environmental Quality Board have been approximately $1,300 to $1,900 per day of hearing. Table C-1 also identifies program funding, by funding source, for Federal FY 2000 and 2001. Federal RCRA grants have been matched with State funds in the general proportion of 75% Federal and 25% State funds. In future projections, however, the State expects to pay closer to 30% of the overall HWP costs. The majority of the State HWP resides within OWM and OAQ of the WVDEP, with additional efforts supplied by DOH and the PSC.

Current HWP Costs for FY 2000

Personnel	$1,094,392
Fringe Benefits	$ 345,390
Travel	$ 95,250
Supplies	$ 36,000
Contractual	$ 135,000
Other (Includes Pass-Thru)	$ 287,140
Indirect	$ 437,757
Total HWP Costs	$2,430,929

9. CAERS and HWMS Sampling and Analysis Costs

Analyses of hazardous waste samples are performed for the HWP by private laboratories which must be State Certified to ensure that the laboratory is capable of performing correct analyses. The contracted laboratories have an agreement with the HWP to perform analyses as needed. The charges, per sample analysis, vary based on the urgency and type of material to be analyzed. To attempt to achieve effective cost control, all sampling analytical costs which are anticipated to exceed $500.00 must be submitted for bid by three (3) laboratories.

The labs conduct analysis of hazardous wastes (e.g.;) metals, organic, and other inorganic wastes) according to analytical procedures outlined in the EPA document "Test Methods for Evaluating Solid Waste (SW-846)", as amended. Generally, the time taken to conduct the testing of various hazardous wastes samples varies between one week to three months depending on the type of waste and the test procedure.

The number of samples has increased greatly from the period of initial program authorization to the present. This increase is to be expected because the regulated universe has greatly expanded and the number of inspections and enforcement cases has significantly increased. Analysis of sampling and the procurement of split samples with facilities is a vital enforcement tool. The independent or contract laboratories generally provide adequate sampling services. For a period of years, the OWR provided some laboratory services for other WVDEP agencies. Those services, however, were discontinued during 1993, and in 1996, a state agency laboratory service was instituted at the Guthrie Center facility which began providing limited laboratory services. Currently, however, only independent or contract

laboratories are used for hazardous waste sampling analysis. From 1985 to the present, the procedures for laboratory testing found in SW 846 have become more complex. Generally, independent laboratories have kept pace with the changing regulatory requirements. To ensure that quality results are attained, a State Program for Laboratory Certification has been put in place and all laboratories used by the State are required to provide QA/QC plans.

Funding Estimates

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 administrative settlements, civil enforcement assessments, and forfeitures. There are restrictions on use of the funds from these sources to implement and administer the HWP.

10. Waste Minimization Program

The Waste Minimization Program (WMP) is an assistance program, part of which is within the CAERS. Three WVDEP staff people form the Waste Minimization Team. One person works directly for CAERS. Part of this person's duties are generator assistance. The two other members of the Waste Minimization Team work in the Office of Water Resources as Waste Minimization Specialists. This WMP is, in part, funded through the USEPA Waste Minimization/Combustion Strategy Initiative grant. The program encourages voluntary waste minimization among all sizes of hazardous waste generators. The Waste Minimization Staff may assist the EU in evaluating proposals for Supplemental Environmental Projects (SEPs), which are brought about by Administrative Consent Orders.

The Waste Minimization Staff person working in CAER's generator assistance responds to inquiries from the public on the following: the rules or regulations as they apply to generators or potential generators; proper management of household hazardous waste; and the meaning of and applicability of new state rules or federal regulations. This employee also functions as the contact person for the Biennial Hazardous Waste Report Program (BRS). The Waste Minimization Team coordinates with the EPA Region III Waste Minimization Team to promote waste minimization activities and education throughout the Region.

SECTION V

STATE PROCEDURES

This section outlines some of the major activities and procedures performed by the HWP. Included are discussions of:

- hazardous waste activity notification;
- RCRIS Database;
- statutory and regulatory program revisions;
- Manifest requirements;
- permitting of new and existing TSD facilities;
- public participation and appellate review;
- compliance monitoring and enforcement;
- ground water monitoring inspections;
- the waste minimization program.

Each activity or procedure is discussed in a separate section which follows.

A. Hazardous Waste Activity Notification

- The CAERS assists individuals in submitting relevant forms, and providing correct information, and serves as a liaison between persons seeking ID numbers and the EPA. This program plays an important role as the State's information clearing house by storing up-to-date information on the RCRIS Database.

- All new hazardous waste treatment, storage and disposal facilities are required to contact the State or the USEPA and obtain an EPA identification number. All hazardous waste generators and transporters must also notify the State or the USEPA of their hazardous waste activity. This notification is generally accomplished through the use of EPA Form # 8700-12. Most notifications are directed to the State, specifically, to the Compliance Monitoring Unit of the OWM. USEPA assigns an EPA Identification Number and notifies the facility of the number through an acknowledgment form.

- Any person who intends to generate, transport, treat, store, recycle, or dispose of a hazardous waste must notify the Chief of the OWM and the Administrator of EPA. An Office Assistant II (OAII), employed within the Compliance Assurance and Emergency Response Section (CAERS), assists individuals that wish to notify the USEPA and OWM of their regulated waste activity. As a result of the notification, an EPA identification number is assigned to the site to allow "cradle to grave" tracking of regulated waste activities. The OAII serves as a liaison between the person notifying of regulated waste activity and the USEPA. The OAII receives the notification (on an official U.S. EPA 8700-12 Notification of Regulated Waste Activity form) and is responsible for researching the site address to ensure it does not currently have an active or deactivated EPA Identification Number. In addition, the request is checked for quality to ensure all relevant information is provided. Once it is determined that the form meets all requirements, it is then forwarded to the USEPA Region III office for the issuance of a permanent EPA Identification Number. The USEPA Region III enters the information into the RCRIS national data base which computer-generates an official EPA Identification Number. The notifier and the State are then sent an Acknowledgment Form specifying the site's number.

- Once the State receives the Acknowledgment form, the OAII creates a file for the site and places it in the State RCRA file system. All subsequent information (inspections, reports, etc.) is filed in the site-specific RCRA filing system.

- Universal Waste facilities follow the same notification procedure as hazardous waste facilities. 33 CSR 20 Section 13 adopts and incorporates by reference, 40 CFR part 273, with the addition, by the State, of fluorescent bulbs to the EPA's list of universal wastes.

- The MOA (Section X, Appendix A) between the State and EPA references a RCRIS MOU to be entered into by the State and EPA prior to March 2000. That MOU will describe the conversion from RCRIS to RCRA/INFO. Examples of responsibilities that will be addressed in the RCRIS MOU

include, but are not limited to, processing hazardous waste notification forms and issuing EPA identification numbers. Currently, OWM has one (1) FTE verifying and processing Notification of Regulated Waste Activity forms (Handler data) to Region III EPA. This employee currently maintains parallel data to the RCRIS Handler Module. After conversion of data from RCRIS to RCRA/INFO is accomplished, this employee will begin assigning EPA identification numbers and will maintain the Handler Module at the state level.

- An OA II for the CMU assigns temporary numbers on a provisional or emergency basis. The assignment of these numbers generally results from a phone call by a person or facility needing a provisional or one-time temporary number to legally transport hazardous waste, frequently generated as the result of a spill or a site clean up action. These provisional numbers are recorded in a state database.

B. RCRIS DATABASE

- All information pertaining to each transporter, generator and treatment, storage and disposal facility is entered into EPA's RCRIS/RCRA Info Database by the computer support specialist (CSS). This information is transmitted electronically to the Region III EPA Office in Philadelphia where it is merged into EPA's nationwide database monthly.

- Responsibilities consist of entering data into a database that tracks compliance and enforcement activities performed by CAER. Correspondingly, the HWMS enters permitting data. Data entry forms are sent to the CSS along with a written report. The CSS verifies that all activites contained in the Inspection Report are recorded on the data entry form. After the data is entered, the CSS performs a data quality review and, if errors are found, the CSS corrects the data.

- A new Oracle-based system, "RCRA Info", will supercede the previous Biennial Reporting System (BRS). RCRA Info was designed to track all hazardous waste generated within LQG and TSD facilities. The CSS will process the RCRA Info data which will be mailed to the State via a diskette by the LQG or TSD. The Waste Minimization Specialist (WMS) will review the data for accuracy. Once it is reviewed and considered accurate, the data will be sent to EPA Region III. An Edit Report of all information is prepared by EPA. The CSS is responsible for reviewing the Edit Report and correcting any discrepancies.

C. STATUTORY AND REGULATORY PROGRAM REVISIONS

The authority for the promulgation of State rules on hazardous waste management is derived from Article 18, Chapter 22, of the West Virginia Code, (Annotated Code). The specific procedures for rule publication and rule format are described in detail in Rule 153 CSR 6 which is Appendix I in Section X. The State's hazardous waste management rules appear as Rule 33 CSR 20. They have been structured to be at least as stringent as the federal program, and for the most part, adopt and incorporate the applicable parts of 40 CFR by reference. The OWM's CAERS has the primary responsibility for hazardous waste rules development.

A draft copy of the rules is prepared with the appropriate revisions to the Federal language to satisfy any specific requirements of the WVDEP documents. The rules are reviewed by the OLS, and then distributed to other Administrations in the State, county governments, and EPA for comments. After reviewing the comments made by these groups, a formal draft is prepared for submission to the State Register.

The draft is then submitted to the Legislative Rule Making Review Committee (LRMRC), a standing committee of the State Legislature. The LRMRC does not have veto power over proposed regulations. If the LRMRC does not approve the rule, however, it generally does not get to go before the full legislature. Alternatively, any legislator can introduce the rule as an independent bill and, if that happens, the rule would follow the normal course of a routine piece of legislation. If the rule is approved by the LRMRC, then the legislature is required, by law, to consider it. Once the State rules have been adopted, the State seeks EPA authorization for the amendments. The State follows the procedures outlined in the EPA's State RCRA Authorization Manual and the regulations of 40 CFR Part 271.

Table 8

WV Regulatory Development Process

Action	Time Required
• Rules development	Variable
• Preliminary draft distributed to counties, interested parties, and Governor's Advisory Council for review	30-45 days
• Revisions to preliminary draft made, drafts put into format required by Secretary of State, proposal reviewed and approved by OLS's office and the Director of the WVDEP	Variable
• Review by Legislative Rule Making Review Committee	16 days maximum
• Review by Secretary of State	15 days
• Publication in Register, Opportunity for public comment, public hearing	30 days
• Comments on proposal addressed and Rule passed by Legislature during Legislative Session	Variable
• Preparation of Notice of Final Filing	within 90 days following Public Comment
• Review and approval by OLS and the WVDEP Director	4-6 weeks (typical)
• Final Review by Secretary of State	10 days
• Publication in State Register	
• Action becomes effective	10 days

D. MANIFEST REQUIREMENTS

A manifest is the shipping document originated and signed by the generator of hazardous waste that contains the information required by 40 CFR as referenced by 33 CSR 20. The primary purpose of a manifest is to track hazardous waste "from cradle to grave"; that is, from the point of hazardous waste generation to the point of its proper treatment, storage or disposal. For this purpose, the State recommends use of the national manifest form located in 40 CFR and does not collect or track manifests for hazardous waste shipments. State personnel examine manifests during routine inspections and during case development investigations. Manifest discrepancies and LDR violations are routinely discovered and cited. EPA manifest requirements are fully enforced. Because the State uses the national form, a copy of the manifest is not included in the Appendices. The following rules pertaining to manifests are applicable:

- The generator shall keep a copy, in accordance with 33 CSR 20, Section 5;
- Each transporter shall keep a copy in accordance with 33 CSR 20, Section 6;
- The designated facility shall keep a copy in accordance with 33 CSR 20, Section 8;
- Copies of the manifest shall be available for inspection by authorized representatives of the WVDEP or other State and Federal agencies.

E. Permitting of New and Existing Treatment, Storage and Disposal Facilities (TSDs)

The Hazardous Waste Program is responsible for the permitting of Hazardous Waste treatment, storage and disposal (TSD) facilities in the State. Hazardous Waste Management permits are issued for both operating TSD facilities and for closed facilities required to maintain post-closure care. Administrative Orders may also be used as mechanisms to cover RCRA closure and post-closure activities at unpermitted TSDs. Although these are the most frequent types of permits issued, the State's rules provide for several other types of Hazardous Waste permits. These include Emergency permits to address situations where there is an imminent and substantial threat to human health or the environment.

Table 9 shows the overall steps in the State's permitting process, followed by a detailed discussion. The list of Hazardous Waste Permitted Facilities can be found in Appendix E, Section X.

Table 9

Permitting Process

- The applicant notifies the WVDEP of Regulated Waste Activity and obtains an EPA ID Number (New Facilities only);
- The applicant submits Part A and Part B of the permit application;
- The State conducts a completeness review of the application;
- If applicable, the State issues a Notice of Deficiency (NOD) to applicant; More than one NOD may be necessary;
- The State conducts a technical review of the complete application, once received;
- The State sends an NOD if required, identifying the deficiencies revealed by the technical review (more than one may be necessary);
- The State prepares a draft permit or Notice of Denial;
- The State advertises this action and gives the public a maximum of forty five (45) days to comment, unless extended by the Chief, or Director.
- The State conducts a public hearing if requested with sufficient interest, as determined by the Chief;
- The State makes a final decision to issue or deny the permit;
- The State issues the Permit. Once the Permit is issued, the opportunity exists for aggrieved parties to appeal to the Environmental Quality Board (EQB) within 30 days of issuance.

1. RCRA Permit Application Review Procedure

RCRA Permit Applications may be for any combination of storage units (containers, tanks, etc.), treatment units (tank, incinerator, etc.) or disposal units (surface impoundments, landfills, etc.) Once the permit application is received by the WVDEP, the permit writer reviews it for completeness. The application is compared to the specific application requirements outlined in OWM Rule 33 CSR 20 and in OAQ Rule 45 CSR 25. Although the PSC and DOH are made aware of the RCRA permit application, they do not participate in the review and approval process for RCRA permits, as the two agencies do not have RCRA permit authority. The focus of the initial review is to determine whether the application is complete, however, if the permit writer finds technical inadequacies, they are noted for future action.

Application Review

TSD facility application review is performed in the Permitting Section of the OWM of the WVDEP, and the Hazardous Waste Section of OAQ. When an application or facility requires that both OAQ and OWM act upon it, coordination is performed, staff to staff, between the agencies. This coordination is carried out using frequent telephone communication and conferences. Public hearings are held in these cases, and the issuance of a final action is coordinated as closely as possible.

The Permitting Section Manager 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 Manager 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 applications review status, maintaining contact with the applicant's representative, and assuring that application review and applicant responses are performed in a timely manner.

DEP utilizes the "review team" concept for TSD facility permit applications. The lead reviewer is responsible to the Section Manager 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 and/or administrative review of the application is provided. Normally such review teams will include, at a minimum:

2. The Permit Review Team

DEP REVIEW TEAM COMPOSITION	
TSD Facility Type	Composition of Review Team
Land Disposal (Including Storage And Treatment impoundments)	Environmental Engineer, Chemist or Chemist-Engineer, Geologist, and Inspector
Incinerator	Chemical or Mechanical /Environmental Engineer, Inspector, and Chemist (optional)
Storage Facility (Non-Impoundment)	Chemical or Environmental Engineer, Chemist, and Inspector
Treatment Facility (Non-Impoundment)	Chemical or Environmental Engineer, Chemist, and Inspector

A completeness review, as explained in more detail below, 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 DEP 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 DEP.

The review of the permit application, from receipt to the issuance of the Permit, falls into four (4) stages excluding the public hearing(s) and appeal. One copy goes to the permit reviewer, another to the Environmental Inspector, one copy to EPA, and one to the Public Information Office.

3. *STAGE 1: Completeness Review*

The completeness of the permit application includes:

1. The application is reviewed to check if it contains all information required by applicable State rules and Federal regulations. The whole application is read and deficiencies are noted.

2. At least one site inspection is conducted by both the permit reviewer and the inspector to get first-hand information about operational procedures at the facility.

3. Based on the review of the application and information obtained during the site visit, the permit writer drafts a Notice of Deficiency (NOD). A NOD is a letter addressed to the applicant that clearly identifies all deficiencies discovered in the initial review of the application and provides guidance on how to address these deficiencies. A final review of the application and the NOD is made by the permit writer's supervisor who makes any necessary modifications to the NOD. Generally, the applicant is given 20 to 30 days to address the issues raised in the NOD. The applicant is encouraged to meet with the permitting staff to seek clarification on any issue related to the permit and to lessen the chances of misunderstanding the State's requirements.

4. The response submission to the NOD is reviewed and if the application is still deficient, a second (2nd) NOD is written (normally 2 NOD's are sufficient but in some cases, 3 NOD's are sent).

5. A letter is sent to the facility indicating that the application is complete.

4. *STAGE 2: Technical Review*

The technical review is started after the application is considered complete. The permit application consists of parts which are reviewed by different technical specialist such as engineers, geologists, and chemists. The procedure normally is as follows:

1. The specialist reviews the part of the application for which he has the professional specialty or for parts which need input from a specialist. The engineering designs are reviewed by the respective engineer(s), the geological and ground water part is reviewed by the geologist, and waste analysis plans and compatibility of different waste and containers are reviewed by the chemists. The Environmental Inspector from the CMU also provides input.

2. Another site inspection by the permit reviewer is required to check the detailed designs to see if they conform with on-site units (The permit reviewer may be accompanied by the respective specialist and the Environmental Inspector).

3. The respective specialists give their comments to the permit reviewer who writes a Notice of Deficiency (NOD), if necessary, and sends it to the facility.

4. The facility's response submission to the NOD is reviewed and if the application is still deficient, a second NOD is written (normally 2 NOD's are sufficient to produce an adequate response).

5. The applicant is encouraged to meet with the permitting staff to resolve issues, thereby resulting in quick processing of the application.

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

The technical review of a permit application for combustion units requires a thorough engineering calculation on design specifications, a trial burn plan and testing, and site specific risk assessments.

Unless there are extenuating circumstances, the state expects that the applicant's response to these NOD's will resolve all outstanding issues. If the applicant's response to the NOD's does not address all issues raised by the State, the State could take either of two courses of action:

- Imposing certain conditions in the permit to obtain the required degree of protection; or
- Denial of the permit application.

Once the permit applicant has addressed all concerns raised by the State in reviewing the application, the permit writer prepares a Draft Hazardous Waste Permit. This is a binding legal document that identifies the requirements the applicant must adhere to when managing Hazardous Waste at the permitted facility.

5. *STAGE 3: Draft Permit and Public Notice*

1. The draft permit is prepared after the application is considered complete, technically adequate, and meets respective regulatory requirements. A letter is sent to the applicant. The permit consists of the main body of the permit along with attachments and fact sheet (possibly to an amended fact sheet).

- The Main Body--The main body of the permit consists of the standards and general conditions that are applicable to all hazardous waste facilities, and special conditions designed specifically for the facility. These special conditions include identification of the waste codes that may be managed, the quantities of waste that may be managed, and the processes that may be used to manage wastes. This section also includes conditions to address any special hazards posed by the particular wastes managed at the facility or any conditions necessitated by the particular circumstances of facility operations (special testing or certification requirements, etc.).

- The Attachments--The attachments to the permit include detailed descriptions of the facility and its operating procedures. The attachments provide specifics of facility design and construction and how the facility will be operated to comply with the State's hazardous waste rules. Examples of permit attachments include facility description, waste analysis plan, contingency plan, training plan, plans and specifications of waste management units, groundwater monitoring plan, treatability demonstration plan, trial burn plan, risk assessment, construction quality assurance/quality control plan, special requirements for managing ignitable or reactive wastes, and closure plan. Other attachments may be included depending on the nature of the regulated activity. The bulk of the information in the permit attachments comes from the permit application. However, it may be modified by the permit writer to assure that the information is adequate from both a technical and regulatory standpoint.

Once the draft permit is prepared, the permit writer submits it to the supervisor for review. The supervisor makes any necessary changes.

The permit writer also prepares a fact sheet for the draft permit. The fact sheet describes the facility and summarizes the conditions in the draft permit. It also lists the regulatory basis for each condition in the draft permit.

2. The public notice is prepared by the public information office and sent to a local newspaper in the general area of the proposed operation and aired on both AM and FM radio stations. A copy of the public notice is sent to the applicant, some federal and state agencies, EPA and all persons on the mailing list.

3. A copy of the draft permit, attachments and fact sheet is sent to the facility, EPA the Environmental Inspector and some state and federal agencies.

STAGE 4: Issuance of Final Permit

1. Before the final permit is issued, all comments received from the applicant, EPA, other agencies, and the public are addressed and mailed to the commentor.

2. The permit is corrected, if there are minor corrections including additions based on public comment. If these additions and/or corrections do not need further public participation, the permit is finalized and issued. An addendum to the fact sheet showing all of the changes to the draft permit and fact sheet is prepared and becomes part of the permit.

NOTES: 1) If a public hearing is conducted, additional input of manpower is required. It varies with different situations. For example, the public hearing for a permit for land disposal units or an incinerator will require more resources than permits for storage/treatment units.

2) Past experience shows that approximately 30 percent of the permits issued are appealed to the Environmental Quality Board. Such appeals require additional resources of permitting and legal personnel.

6. Public Participation and Appellate Review

Section 11 of WVRule 33 CSR 20 describes three separate public participation phases during the RCRA permit application process. The following are explanations of the rules in Section 11:

Section 11.5. The first phase is the Pre-application Public Meeting and Notice in Section 11.5 of 33 CSR 20. Prior to the submission of a Part B permit application for a facility, the applicant must hold at least one public meeting to inform the community and solicit questions. The applicant provides 30 days advance notice of this meeting by all of the following forms; a newspaper advertisement, a sign, a broadcast media announcement and a notice to the permitting agency.

Section 11.6. The second phase is Public Notice Requirements at the Application Stage. As described in 33 CSR 20, Section 11.6, the State, provides public notice when an initial hazardous waste Part B permit application is received or when applicants are seeking renewal of existing permits, except for post-closure activities and/or corrective action permits. The State provides copies of the public notice to the applicant as well as persons on a mailing list and all state and local governments affected by the permit. The State concurrently places copies of the permit application and supporting documents near the vicinity of the facility or at the Permitting agency's office.

Section 11.7 The Information Repository. If the Chief of the Office of Waste Management determines that sufficient public interest exists regarding a proposed permit for a hazardous waste management unit, the Chief may require the facility to establish an information repository at or near the facility for the public to access all relevant information, documents, reports and data about the unit.

Section 11.8 Application for a Permit. An applicant completes, signs and submits the application to the Chief. New facility applications are reviewed for completeness within 30 days and existing facility permits (part A and Part B) are reviewed for completeness within 60 days of submittal. Once the Chief has determined that the application is complete, the applicant is notified and given a project decision schedule covering the draft permit, public notice, comment period, public hearing and final permit.

Section 11.9 Modification, Revocation and Reissuance, or Termination of Permits. Permits can be modified, revoked and reissued, or terminated only for reasons specified in 40 CFR Sections 270.41 or 270.43. The permittee or any person can request, in writing, that a permit be modified, revoked and reissued, or terminated. Denial by the Chief of the request may be appealed to the EQB. The Chief may modify, revoke and reissue, or terminate a permit on his or her own initiative for reasons specified in 40 CFR Sections 270.41 or 270.43. If the Chief modifies or revokes and reissues a permit, he or she prepares a draft permit as described in Section11.10. If the Chief terminates a permit, he or she issues a Notice of Intent to Terminate which is a type of draft permit.

Section 11.10 Draft Permits. When the application is complete, the chief prepares a draft permit or issues a Notice of Intent to Deny, which is also a type of draft permit. The draft permit contains all conditions, compliance schedules, monitoring requrements, and standards found in 40 CFR Sections 270.30 through 270.33. The draft permit is accompanied by a fact sheet, is based on an administrative record, is publicly noticed and is made available for public comment.

Section 11.11 Fact Sheet. If the Chief determines that a draft permit has wide-spread public interest or raises major issues, a fact sheet is prepared. The fact sheet is a condensation of all vital permit information, including public comment and public hearing details.

Section 11.12. Public Notice of Permit Actions and Public Comment Period. The chief provides public notice when a draft permit has been prepared and a public hearing has been scheduled. These two notices, the notice of a forty-five day public comment period and a thirty day notice prior to a public hearing can be combined into one notice. Public notices are mailed to the applicant, other affected governmental agencies, persons on a mailing list. Public notices are placed in major local newspaper and broadcast over radio, in addition to mailing.

11.13. Public Comments and Requests for Public Hearings. Any interested person may submit written comments on a draft permit and a written request for a public hearing.

11.14. Public Hearings. The Chief may hold a public hearing at his or her discretion, or if there is significant public interest in or opposition to the draft permit. The Chief designates a presiding officer for the public hearing. The hearing officer may receive oral or written statements regarding the draft permit and shall make a transcript of the hearing available to the public.

11.15. Reopening of the Public Comment Period. Substantial new questions raised about a draft permit can cause the Chief to prepare a new, modified permit, prepare a revised fact sheet and reopen the comment period or reopen the comment period to allow interested persons more opportunity to comment. Public notice is given when any of those actions have occurred

11.16. Issuance and Effective Date of Permit. After the close of the comment period, the Chief issues a final pemit decision called a Notice of Decision to issue, deny, modify, or revolke and reissue, or terminate a permit. This written Notice of Decsion is effective in 30 days of issuance unless otherwise specified or a hearing or review is requested.

11.17. Response to Comments. In the final permit decision, the Chief responds in writing to specific comments regarding changes to the draft permit or the permit application during any hearing or comment period. This response is available to the public.

11.18. Administrative Record. The provisions of the draft permit is based on the administrative record, which is the permit application, fact sheet, all supporting data and documents submitted by applicant or

determined by the Chief. Final permit decisions are based on the administrative record and on public comments and response to comments. The administrative record is complete when the permit is issued.

11.19. Public Access to Information. This Section outlines the rights of the public to access information, documents, records and reports regarding any permit or permit application. The rights of the permit applicant to claim "confidential" information are specified and are intended only to protect trade secrets of applicant. The section emphasizes the intent of the agency to not limit the disclosure of information to the public.

There is a maximum 45-day period to allow for public comment on the draft permit. The draft permit and fact sheet are made available for review in the Public Information Office of the WVDEP and in another place close to the facility.

During the comment period, the public may request a hearing on the draft permit. A hearing may also be held without a request from the public if the WVDEP feels that one is warranted. Notice of a public hearing is published in a newspaper of general circulation serving the area where the facility is located, and summaries of the notice are given on radio announcements.

Once a hearing is scheduled, the OWM represents the WVDEP at the public hearing. Any person at the hearing is allowed to submit oral or written statements and data concerning the draft permit. The agency may extend the comment period by so stating at the hearing. A written transcript of the hearing is made available to the public.

After the comment period ends, responses to public comments are prepared. Based on a review of the permit file and public comments, the agency decides to issue the permit as drafted, modify the draft permit, or deny the permit. The final decision on action on the permit is made by the Chief of the OWM.

If no adverse comments were received on the draft permit during the comment period, the permit becomes effective on the date designated by the Chief of the OWM. However, if the permit is appealed, the Environmental Quality Board will conduct a hearing. Appeals to the Environmental Quality Board for a hearing must include factual allegations demonstrating that the person requesting the hearing is aggrieved by the final determination and that the final determination is either "legally inconsistent with any provision of law" applicable to the permit or is "based upon an incorrect determination of a relevant or material fact."

During the hearing of a permit appeal before the EQB, documented evidence, witness testimony, witness cross-examination, and rebuttal of evidence may be entered into record. The EQB evaluates the presented evidence and arrives at a determination which becomes a "final decision". The final decision is put into writing and includes statements of: Finding of the fact, Conclusions of the Law, and the Order. The final decision is then delivered to each party or the party's attorney. The EQB follows this same procedure when Unilateral Administrative Orders are appealed.

The decision by the EQB may be appealed to civil court.

The WVDEP strives to limit the need for EQB hearings by providing citizens with early opportunities to participate in our permitting decisions. Moreover, the WVDEP attempts to settle disagreements over factual issues before reaching this stage in the permitting process by working closely with communities throughout the permitting process. Appeals to the EQB, however, remain an option for citizens who believe that WVDEP has erroneously made a final determination.

To keep the public informed of and involved in permitting decisions, the Act requires the WVDEP or the applicant to "publish notice" throughout the permit review process. In either case, the applicant would incur all costs associated with publishing notice. The WVDEP will publish a public notice when a draft permit has been prepared or in the event that a permit application is denied. Public Notice is not required, however, when a request for permit modification, revocation and reissuance, or termination is denied.

The Act also requires that each notice be published at least for one week in a daily or weekly newspaper of general circulation in the geographical area in which the proposed facility is located. The WVDEP may also require the applicant to send notices directly to each person requesting a meeting or hearing, and may require that the notice be posted at the site or at other public facilities in the area of the proposed facility.

7. Permit Modifications

The State recognizes the same types of permit modifications as does EPA. The three recognized classifications of permit modifications can be found in Appendix I of 40 CFR Section 270.42, revised as of July 1, 1995. The modification procedure shall not be discussed at length, because it is the same procedure as EPA uses. The permit process is indicated in the flow chart on page 28-1 of this Section.

8. Interaction with Enforcement Personnel

There is a day-to-day interaction between the OWM enforcement personnel, environmental inspectors and the permit writers. The environmental inspectors are continually working to identify non-notifiers and handlers of hazardous waste that are operating without a permit. This information is provided to the enforcement personnel for administrative or civil action, as needed. Permit writers assist enforcement personnel in the interpretation of permit conditions and regulatory requirements. Environmental inspectors and enforcement personnel inform permitting staff of changes in facility operations that may require permit modifications and ambiguous situations that require clarification. On occasion, permit writers accompany environmental inspectors on site visits to permitted facilities, so they may act as a team in evaluating a specific permit condition.

9. Routine Review of Facility Operation

The permit writer verifies that the facility has the required financial assurance mechanism in place to cover the cost of closure or post-closure care. Biennial Reporting System (BRS) data is available to the permit writer for all TSD facilities.

10 Permitting Reports Required by RCRA

The Computer Support Specialist (CSS) for the CAERS enters RCRIS data, which is transmitted to Region III EPA electronically. The data undergoes QA/QC review by the CSS and a WMS. The RCRA grant requires the following computer generated reports shown in Table 10, as an essential part of the Permitting Section's reporting requirements:

TABLE 10
TYPES OF REPORTS AND DUE DATES

REPORT NAME	FREQUENCY/DUE DATES
RCRIS Permitting Forms	Filed electronically by the State on a quarterly basis.
Compliance with Financial Assurance Requirements form on the status of the financial documents (closure/post-closure and liability) for each permitted facility	By July 15 of the Federal Fiscal Year.

11. Miscellaneous Units-Subpart X Permits

In West Virginia, currently one facility is seeking a permit for Miscellaneous Units-Subpart X. That facility is Allegany Ballistics Laboratory/Alliant, which seeks a permit for the open burning of explosive hazardous wastes.

The State has the expertise needed to adequately review, amend and approve a Subpart X permit for Allegany Ballistics, although the State welcomes EPA's technical assistance during any permit review process.

12. Joint Permitting

Joint permits are RCRA permits that include and involve both the EPA and the State as oversight participants. These joint RCRA permits that include the EPA and the State are accomplished by the attachment of a rider to the State permit.

The following is an overview of the coordination between the OWM and OAQ regarding each agency's responsibilities for RCRA permits:

The OAQ is responsible for issuing permits for combustion units covering areas such as construction, operation, air pollution performance standards, monitoring operating parameters, and control of air emissions. The OAQ reviews and includes in the permit training requirements for the operation of the combustion unit, such as an operator's certificate to operate the incinerator, the automatic waste feed cut off device and perform troubleshooting in the event of a malfunction. The rest of the RCRA permit that is covered under part 264 (including contingency plan, closure plan, financial assurance, etc.) is the responsibility of OWM. The permit for the TSD issued by OWM gives specific reference to the OAQ permit for the TSD's air emissions units. Moreover, close coordination between the Permitting sections of the two agencies invariably occurs to ensure consistency in connected permit provisions. The two agencies communicate frequently at both managerial and staff level, and hold telephone conferences or inter-agency meetings to discuss permit issues regarding a specific TSD facility, as the need arises.

F. Compliance Monitoring--General Inspections

The WVDEP reviews all of the facilities that it regulates to identify those facilities that should be accorded the highest priority for inspection. The following characteristics are used to determine those facilities that require special attention:

- Sites that are perceived to be a threat to human health or the environment and which have a contaminated aquifer, especially when it is has the potential to be used as a drinking water resource. These sites are assigned the highest priority, since contaminated aquifers may create an acute threat to the public health, requiring immediate attention and remedial action.
- Sites at which there have been major enforcement actions and/or repeated noncompliance. These sites include facilities that are currently the target of significant enforcement actions, including remedial action, permit revocation, and major fines; and/or facilities demonstrating frequent noncompliance and patterns of violation.

The RCRA Work Plan describes how inspection priorities are set for facilities that do not warrant special attention under the above criteria. According to the RCRA Work Plan, the State has the following inspection commitments:

- Inspect all TSDs that were not inspected in the previous year, including any newly regulated TSDFs.
- Inspect any federal TSDs that have a CEI due.
- Inspect annually, commercial TSDs accepting CERCLA waste.
- Inspect State and local TSDs that were not inspected in the previous year, or have not returned to compliance.
- Inspect all Land Disposal Facilities (LDFs) not inspected (CAERS of OMI) in the previous two (2) years.
- Accompany EPA and OAQ on hazardous waste combustion units inspections, to receive on-the-job training.

The WVDEP makes provisions for its inspectors to receive EPA training. The following courses are routinely provided to new inspectors:

- Basic Inspector Training (Fundamentals of Environmental Compliance Monitoring Inspections);
- OSHA 40-Hour Hazardous Waste Cleanup Course;
- Advanced RCRA Inspector Training; and
- Other RCRA-related courses, as available.

G. Groundwater Monitoring Inspections

There are various types of Groundwater Monitoring Inspections developed by EPA. Of these, the CAERS has adopted two (2) EPA inspection procedures. They are the Comprehensive Groundwater Monitoring Evaluation (CGME) and the Operation and Maintenance Inspection (OMI).

The Comprehensive Groundwater Monitoring Evaluation (CGME) is a detailed evaluation of the adequacy of the design and operation of ground water monitoring systems at RCRA facilities. The various activities involved in this inspection are:

- Pre-CGME Planning
- CGME Office Evaluation
- CGME Field Evaluation
- CGME Report Preparation
- Review of CGME Report
- Follow-up Inspection, if needed.

The personnel involved in the various activities associated with a CGME are permit writers and environmental inspectors.

Operation and Maintenance Inspection (OMI), inspections are conducted once the monitoring system at a site is shown to be adequate by means of a CGME. Periodic OMI inspections are used to evaluate the performance of the monitoring system. The OMI inspection focuses on how owners and operators conduct operations and maintain their groundwater monitoring systems. An OMI inspection involves review of records, inspection of wells, and verification that the sampling crew follow the "Sampling and Analysis Plan" while collecting ground water samples. For more information on either of these procedures please reference the Federal publication "RCRA Comprehensive Ground-Water Monitoring Evaluation Document", developed by the Office of Waste Programs Enforcement, Directive 9950.2, March 1988. The sampling procedure is different for each of the two (2) inspections and is conducted in accordance with the applicable EPA guidance documents.

When appropriate, the WVDEP will split samples with the facility owner or collect samples to verify the levels of contaminants present.

Environmental Inspectors from the Compliance Monitoring Unit generally conduct follow-up inspections to verify that recommendations from previous inspections have been carried out. Failure to implement any requirements will result in a referral to the Enforcement Unit for further action.

H. Waste Minimization Program and BRS

§3002 of RCRA requires generators of hazardous waste to identify, in their annual reports, the efforts undertaken to reduce volume and toxicity of waste generated and reductions in volume and toxicity actually achieved. Moreover, generators are required by 40 CFR Appendix to Part 262 to certify on their manifests that they have a waste reduction program in place to reduce the volume or toxicity of waste as far as economically practicable.

West Virginia's Waste Minimization Program is comprised of two Waste Minimization Specialists and a Genrator Assistance Person (GAP) working as a team to help generators and other members of the regulated community meet these requirements. The Waste Minimization Team engages in a variety of activities which have been previously described in this document.

Pollution Prevention Clearinghouse:

West Virginia has access to EPA's Pollution Prevention clearing house data bank to ensure the information represents the latest acceptable disposal techniques for the remedy of pollution problems. West Virginia also has access to the Waste Reduction Resource Center located in North Carolina.

Biennial Report

The GAP in the CAERS is the contact person for the Biennial Report and is responsible for the review of the report. The Biennial Report (BRS) Procedure is as follows:

- The State distributes the instruction booklets, and forms to all LQGs and TSDs for their completion and submittal to the CAERS.
- This information undergoes pre-data entry review and corrections are made as needed.
- The corrected information is entered into RCRA Info.
- EPA runs edit report and any discrepancies noted may lead to investigations or inquiries of the facility which submitted the data.

SECTION VI
RESERVED FOR RCRA SUBTITLE C CORRECTIVE ACTION, RADIOACTIVE MIXED WASTE, AND DELISTING

Section VI is reserved for a description of WVDEP's structure and procedures for implementing RCRA Corrective Action, Radioactive Mixed Waste, and Delisting as part of the HWP. The WVDEP anticipates applying for authorization for RCRA Corrective Action, Radioactive Mixed Waste and Delisting in the year 2000.

Note: this authorization application does not include authorities associated with RCRA Subtitle C Corrective Action, Radioactive Mixed Waste or Delisting.

SECTION VII

COMPLIANCE ASSURANCE AND EMERGENCY RESPONSE SECTION

A. Identification of Members in the Regulated Community

West Virginia's hazardous waste regulatory program has reached a mature phase of development. The core of the universe of facilities that require permits has long since been identified through the initial notification and inspection process. This maturation has involved the analysis of notifications of facilities that desire permits, and the investigation of generators identified by the Compliance Assurance and Emergency Response Section (CAERS) as possibly needing a permit.

Facilities may be required to obtain permits as a result of their handling newly identified hazardous waste. Such facilities are identified through voluntary notification, enforcement action, and review of notifications sent to the EPA. Newly promulgated regulations are publicized through rule making notices so that the regulated community is aware that they may be subject to permitting requirements.

There are two basic strategies followed in identifying new hazardous waste generators and transporters. First, newly regulated waste handlers are identified by comparing the names of generators or transporters that might not previously have been regulated against those listed in agency records. Second, new businesses locating within the state are classified by their types of operations at the time of initial routine inspection. Based upon an understanding of the new businesses' basic operations, the environmental inspector can ascertain a general estimate of the businesses waste streams and place them in a sector or category.

The state identifies non-notifiers through inspection of facilities that are suspected of handling hazardous waste and through complaint investigations.

The general procedure used to handle non-notifiers is briefly described:

- Compliance Assurance and Emergency Response Personnel become aware of the possible existence of a non-notifier through one of the previously-discussed methods;
- Environmental Inspectors determine the location of the facility or person who has failed to notify;
- Environmental Inspectors visit the site location and conduct a Compliance Evaluation Inspection (CEI);
- If the facility or person is determined to be a non-notifier, a Notice of Violation or NOV recommending compliance, is issued to them by the Environmental Inspector. Generally, the NOV is accompanied by a CEI Report detailing the site visit in narrative form;
- The Environmental Inspector conducts a follow-up file review to determine if notification has occurred. The Environmental Inspector may also conduct a follow-up site visit;
- If the non-notifier fails to notify after receipt of the NOV, the matter is referred to the Enforcement Unit (EU) for an Administrative Action.

The differences in procedures that have been initiated to accommodate WV adoption of revised RCRA rules are as follows:

- Environmental Inspectors evaluate generators' compliance with land disposal restrictions during routine RCRA inspections. This evaluation is accomplished during the review of generator manifests;
- Environmental Inspectors evaluate generators' compliance, specifically with used oil regulations, universal waste regulations and, more generally, with all 40 CFR rules listed in the checklist attached to the OLS Statement.

B. Data Management Systems

There are two main systems that are used by the Program. They are as follows:

- RCRIS - Resource Conservation and Recovery Information Systems. RCRIS was developed by EPA as a replacement for the Hazardous Waste Data Management System (HWDMS) to promote more effective tracking and reporting of hazardous waste activities. EPA and the State have a current RCRIS Memorandum of Understanding that outlines the State's responsibilities regarding RCRIS, a copy of which is enclosed in Section X. In March 2000, the State and EPA will enter a new RCRIS MOU based upon the RCRA Info system following conversion of data from RCRIS to RCRA Info. The State will begin assigning EPA identification numbers and will maintain the Handler Module at the state level RCRIS stores information related to permits, including various actions taken. See the MOU (Appendix B, Section X) between the State and EPA for details of the RCRIS MOU between the State and EPA.

- A state database system, known as "Genny Long", is in place to categorize and track generators of all sizes. Genny Long reports are printed when requested by an Environmental Inspector or by the public through a FOIA request.

C. Inspections and Compliance Monitoring

The State, through the CAERS, performs RCRA Compliance Evaluation Inspections (CEIs) of generators and TSD facilities. In addition, for facilities with groundwater monitoring systems, the CMU performs Comprehensive Groundwater Monitoring Evaluations (CME's) and Operation and Maintenance Inspections (O&M).

In performing inspections of groundwater monitoring systems, the State follows procedures outlined in the EPA manual "RCRA Groundwater Monitoring Systems" (OSWER Directive 9950.2, March, 1988).

The main difference between inspecting TSDs and inspecting generators and transporters is that a TSD gets inspected for compliance with a permit and applicable laws, rules and regulations. Whereas generators and transporters are inspected only for compliance with applicable laws and rules or regulations. The State uses EPA's "RCRA Inspection Manual" (OSWER Directive 9938.02b, October 1993) as guidance for performing inspections.

As an integral part of compliance monitoring, Environmental Inspectors inspect various hazardous waste permitted facilities, hazardous waste generators and transporters of hazardous waste. If the inspector finds a violation, the facility or generator is verbally notified and is issued a Notice of Violation which is part of a written report. This written report is mailed to the facility or generator by Certified Mail. A copy of the written report is sent to EPA and the violations are entered into RCRIS. The inspector conducts a follow-up inspection, if necessary, and if the violation(s) are not remedied, the inspector refers the case to administrative enforcement in accordance with EPA's Enforcement Response Policy. This procedure will be described in more detail in this Section.

The remainder of this subsection is organized into three parts. The first discusses the different types of inspections and how the Compliance Monitoring Unit determines who will be inspected. The second section discusses the inspection itself and how it is conducted. The final section discusses the level and mix of resources the State has to carry out compliance monitoring and how the addition of revised RCRA rules has affected the State's program in this area.

1. Types of Inspections

The types of inspections that the Compliance Monitoring Unit conducts are briefly discussed below:

Inspections of Hazardous Waste Permitted Facilities--A listing of the universe of permitted facilities is kept and maintained by the CMU. All facilities inspected during the year are based on the criteria outlined in the RCRA grant, biennial Office of Enforcement and Compliance Assistance MOA and RCRA Statute. The RCRA grant is a working agreement between EPA and the State that specifies the type and amount of RCRA-related work to be undertaken, by the State, in a given year. Facilities or types of facilities are listed in the RCRA grant and are monitored for compliance with State rules and permits as part of the commitments. Each of the facilities is normally inspected within a time period outlined in the RCRA grant.

On an as-needed basis, inspections are also required to determine if construction has been done in accordance with permit conditions, and to determine if a facility has been closed in accordance with an approved closure plan.

Hazardous Waste Generator Inspections--All generators of hazardous waste are listed in a previously-mentioned database system called Genny Long, created in-house.

Generators are placed, in order of priority, for scheduled inspections based on the following criteria:

- The amount of waste the generator produces. Pursuant to the FY2000/2001 OECA MOA, at least twenty percent of large quantity generators (LQGs), facilities generating more than 1000 kgs. per month of hazardous waste are inspected every year.
- The compliance history of the LQG; and,
- The proximity of the LQG to large populations or potentially environmental sensitive areas.

Hazardous Waste Transporters--Currently, there are twenty eight stand-alone transporters of hazardous wastes in the State. A list of these transporters is provided in Appendix F of Section X. The list also includes transporters that are also generators and TSDs. In accordance with EPA grant commitments, the HWP inspects the transporters headquartered in the State. The frequency of inspection increases with aggravating factors such as those found for hazardous waste facilities (i.e., violations determined through manifest review, DOH non-compliances, etc.). The state guidelines for transporting hazardous wastes are found in 49 CFR, as referenced by 40 CFR section 263.10. For a comprehensive overview of PSC and DOT acivities in support of the HWP, see the inter-agency MOUs.

Special Case Inspections--The CMU also performs various "special case" inspections as circumstances require. These include:

- Responding to citizen complaints regarding suspected violations of hazardous waste laws and rules and responding to citizen complaints about activities or pollutant emissions of LQG's;
- Responding to reports from other government agencies with information on possible hazardous waste problems at a site;
- Conducting follow-ups to determine compliance on previous HWP enforcement actions;
- Responding to reported spills or discharges of hazardous materials; and
- Participating in EPA-driven Enforcement Initiatives that target specific area sectors or types of hazardous waste facilities. (Examples are Non-Notifier Initiatives and Chesapeake Bay Initiative.)

Other Routine Inspections--A permitted facility that has been newly constructed or modified is required to notify the Chief prior to beginning operations in the new portion of the facility. An inspector, and the permit writer for the facility, may perform an inspection to determine whether construction was in compliance with conditions of the permit. For facilities that are closing, an

inspector and permit writer perform the final inspection to determine if a facility has been closed in accordance with an approved closure plan.

Hazardous Waste and Pollution Complaints--As soon as a citizen complaint is received, details relevant to the complaint are recorded. Based on facts provided, a decision is made regarding the validity of the information received and, if necessary, it is assigned to an inspector or referred to another agency. Based on data collected, the case is either closed or another follow-up is performed.

Spills/Clean-ups--Response to incidents involving Hazardous Substances has top priority in the Administration due to its imminent and direct threat to both the public's health and to the environment. Members of the CAERS have certain supervisory and technical oversight responsibilities at each of their assigned facilities during a spill response, although the personnel added to the CAERS from the former specialized Site Investigation and Response Section of OWM now add their expertise to spill responses. In general, however, Environmental Inspectors assigned to the CAERS act as primary response personnel with oversight responsibilities during hazardous response emergencies resulting from accidents or spills during transport.

2. Inspection Procedures

Personnel of the Compliance Monitoring Unit routinely inspect hazardous waste generators, transporters, and permitted facilities for compliance with State hazardous waste rules. These inspections involve pre-inspection preparation, the actual inspection, and any post-inspection activities necessary, in response to non-compliance, with regulatory requirements. Table 11 provides an overview of an inspector's day-to-day activities. The following paragraphs provide a detailed description of these activities.

Table 11

• Inspector determines when the routinely-unannounced inspection will occur;
• The inspector reviews annual reports, files from previous inspections, and the facility permit (if applicable);
• The inspector conducts the inspection, collection of pertinent data, and any notations;
• Appropriate checklists are completed;
• NOV's are issued for violations noted during the inspection;
• The formal report, describing the inspection, and results of the inspection, are submitted to the Assistant Chief of the CAERS;
• Follow-up inspections are scheduled to ensure compliance with all actions the inspector requires of the facility; and
• Failure to comply could result in more formal actions and/or other enforcement actions.

Prior to the inspection, the inspector may review annual reports for information on the type and quantity of hazardous waste managed by waste handlers. The inspector may also review files from previous inspections. For permitted facilities, the inspector may review the facility permit and discuss the facility with the permit writer to determine any particular concerns about the facility.

Inspection--During the on-site inspection a broad range of actions may be performed. These generally include:

- Pre-inspection conference with facility representative (optional);
- Physical inspection of the facility;
- Collection of evidence of violations, including samples and photographs (split samples are routinely offered to facility representatives);
- Review of facility records (optional);
- Closing conference with facility representatives; and,
- Preparation of inspection reports.

While conducting site inspections, environmental inspectors may, as an inspection aide, use different checklists including: TSD facilities checklist, generator facilities checklist, small quantity generators checklist, conditionally exempt small quantity generators checklist and Land Disposal Restrictions checklist. Experienced inspectors, however, do not often utilize or require checklists. The inspector may issue a Notice of Violation form at the conclusion of the inspection if any violation is observed. Generally, however, a Notice of Violation is mailed to the facility. A typewritten inspection report may also be prepared to summarize waste streams and inspection findings. A copy of the typewritten report is sent to EPA and all violations are entered into RCRIS. See Section IX for an outline of an NOV.

Post-Inspections Activities–If violations are noted during an inspection, the usual procedure to obtain compliance begins with a Notice of Violation for any and all violations detected. Often, less serious violations are corrected during the Inspection; however, all violations are noted in the Inspection Report. A Notice of Violation that recommends specific corrective actions within a designated time frame is sent to the violator by an Inspector Supervisor from the CMES. The NOV is part of the Inspection Report which describes the Inspection in narrative form. The Inspection Report routinely advises the violator that the violations detected have been referred for the initiation of an enforcement process.

Response Time– If a minor violation has not been corrected within a reasonable time period ranging from immediate compliance to thirty days, an additional time period to achieve compliance may be allowed. As specified in the ERP, the CAERS decides within 90 days if the enforcement action is to be formal or informal. By the end of the 90 days, if the minor violations are not corrected, the appropriate response would be a formal enforcement action such as an Administrative Order. At the time that a decision is made by CAERS to undertake a formal enforcement action against a Secondary Violator (SV), the SV is reclassified as a Significant Non Complier (SNC), in accordance with the ERP.

3. Inspection Resources and Workload

Although there are some areas of increased regulatory coverage due to the adoption of revised RCRA rules, significant additional workload burdens are not anticipated because CAERS' Environmental Inspectors already focus attention on these areas during routine inspections. EPA authorization for the used oil rules, land disposal restrictions, and universal waste rules, therefore, represent little additional work for the CAERS.

RCRA training is ongoing to enhance the effectiveness of enforcement of the used oil rules, universal waste rules, and land disposal restrictions. EPA staff may participate with State Environmental Inspectors in joint inspections as a means of reinforcing the training. A more detailed discussion of joint inspections may be found in the State Grant Work Plan as referenced by the MOA.

The following statements summarize the anticipated training procedures regarding the Land Disposal Restrictions, Used Oil Regulations, and Universal Waste Regulations: The CAERS plans to regularly train inspectors and enforcement staff, while the HWMS will train permit writers in the aforementioned regulatory areas. Permit writers shall accompany inspectors to permitted facilities when their knowledge or experience may be useful in the inspection of the facility and evaluation of its compliance within the regulatory areas. Personnel from other state agencies shall accompany CAERS and HWMS personnel, as requested, and as time and resources permit. This type of joint State inspection enables personnel from various agencies to learn from each other and gain understanding of the total scope of environmental regulations.

West Virginia has a list of state approved laboratories, therefore all samples taken by the Environmental Inspectors are sent to laboratories qualified to run the analysis needed. During sampling inspections, environmental inspectors advise facilities that request split samples or take their own samples that state approved laboratories should be utilized in the analyses of samples.

D. Enforcement Process

This subsection is organized into five parts examining the following topics: the Enforcement Units' enforcement procedures, enforcement of corrective conditions, penalties and violations, time frames for enforcement actions, and the resources needed to operate the enforcement program.

1. Enforcement Procedures

Enforcement Process - In accordance with EPA's Enforcement Response Policy and the Hazardous Waste Non-Compliance Response Policy, the EU takes timely and appropriate action against all persons in violation of the hazardous waste rules, permit requirements, compliance schedules and all other program requirements. Once a CEI report is prepared, a NOV can be issued by the Environmental Inspector. If the violator fails to comply by correcting the violation within the time period specified in the CEI, the CAERS may pursue other enforcement actions including administrative orders, and civil and criminal actions including injunctions. The majority of enforcement actions to compel compliance are NOVs and administrative orders.

Administrative Enforcement Process--Administrative enforcement occurs through an administrative order which requires the hazardous waste facility or violator to remedy violations by a specific date. The environmental inspector provides support for each violation noted in the Inspection Report by using analytical results of waste samples, photographs of observations, interviews and written reports. The Inspection Report is a written communication to the facility indicating areas of complaince and non-compliance. The NOV contained in the Inspection Report describes the nature of the violation and the specific permit condition, the law or regulation section being violated. The NOV advises the violator to obtain compliance. The Inspection Report generally contains a narrative describing the violations and supporting documents. The Inspector Supervisor checks the Inspection Report for accuracy and signs off on it, prior to mailing it to the facility or violator. One copy of the Inspection Report is mailed to the facility or violator, one copy is mailed to EPA and one copy is kept in the CAER's RCRA file.

There are three processes possible regarding administrative enforcement for RCRA violations. The first is the issuance of a NOV by the Environmental Inspector with no enforcement referral (as long as the violations are corrected). This is an informal enforcement action. The second process is referral of the NOV through the Assistant Chief of CAERS to EU for an administrative order. The third process is the referral of the NOV through the Assistant Chief to the Civil Administrative Penalty Program. The Assessment Officer issues a Notice of Civil Administrative Penalty which is mailed to the violator.

Administrative Orders are of two varieties; Unilateral and Consent. The OWM Chief, acting for the Director of the WVDEP, issues Unilateral Orders to compel compliance with the Rules. The violator may appeal the Order to the EQB, producing a hearing before the EQB which determines the fate of the Order. The Order may be upheld, vacated, over-ruled or modified and reissued by the EQB. The violator or the Chief may appeal that Order to Civil Court. If the violator chooses to ignore the original Unilateral Order, the Chief may refer the violator to the OLS or to EPA. The violator must obey the original Unilateral Order during the appeal period, unless the EQB issues a stay of the Order.

The second type of Administrative Order is the Consent Order which is usually proposed in draft form to the violator, and offered as an administrative settlement to resolve violations detected by the environmental inspector. The negotiation of a Consent Order occurs between Enforcement Unit staff and the violator and/or his representative. The EU staff often meets in person with the violator to negotiate the terms of the settlement. The Consent Order process may require several meetings to reach a successful agreement. When repeated attempts to reach an agreement by negotiation are unsuccessful, the CAERS may issue an administrative Unilateral Order. If these administrative remedies fail to achieve compliance, and an Order is ignored, or an agreeable settlement is not attained, the violator may be referred to the OLS for civil court action or to EPA.

West Virginia Civil Penalties are specified in the West Virginia Code and are equivalent to EPA fines.

Civil and Criminal Enforcement Procedures--The State has the ability to pursue both civil and criminal enforcement actions against non-complying handlers of hazardous wastes. As discussed in the OLS statement, authority for the pursuit of criminal efforts is found in Chapter 22, Article 18, Section 16 of the West Virginia Code (Criminal Penalty). Chapter 22, Article 18, Section 17 provides authority for the pursuit of Civil Penalties.

West Virginia Criminal Enforcement Process--In identifying a case to be potentially criminal in nature, several criteria are taken into consideration. The first criteria is, through a criminal investigation, that proof must be obtained that the violator knowingly committed a violation pertaining to illegal treatment, storage or disposal. There are two types of crimes; felonies and misdemeanors.

The criteria for a felony is for the violator to have exhibited an unjustified and inexcusable disregard for human life or the safety of others thereby placing another person in imminent danger of death or serious bodily injury:

- Bodily injury which involves a substantial risk of death;
- Unconsciousness;
- Extreme physical pain;
- Protracted and obvious disfigurement; and
- Protracted loss or impairment of the function of a bodily member, organ or mental faculty.

A criteria for a misdemeanor crime contains the knowing violation but is more limited to the violator making false material statements, destoying, altering or concealing records required under 33 CSR 20.

Criminal Fines and Penalties

The assessment of criminal fines is authorized by §22-18-16 of the West Virginia Code, which is similar in scope to Section 3008 (d) of RCRA. The knowledge of 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 Code provides for criminal fines and penalties consistent with RCRA §3008(3) when violations threaten or cause endangerment of human life or bodily injury. See West Virginia Code §22-18-16(d). The term "serious bodily injury" means:

- Bodily injury which involves a substantial risk of death;
- Unconsciousness;
- Extreme physical pain;
- Protracted and obvious disfigurement; and
- Protracted loss or impairment of the function of a bodily member; organ or mental faculty.

Apart from the WVDEP, the West Virginia Division of Natural Resources, WVDNR, develops cases for prosecution as environmental crimes within the State of West Virginia. In order to prosecute environmental crimes, both agencies with their combined resources are involved. These agencies and the relevant staff members are:

- The WVDEP - Environmental Inspectors have the technical background to evaluate the suspect's operations;
- WNDNR Conservation Officers have the power necessary to investigate the alleged crime; and
- EPA and EPA criminal investigators also have the power and training necessary to investigate the alleged crime.

Once a case is identified as being potentially criminal in nature, the EPA, the FBI, or the WVDNR may be notified. Complaints can be received from members of the public or from other agencies, as well as from WVDEP staff.

The case is categorized as being criminal or not criminal in nature by the Assistant Chief of the CAERS. If the case is determined to be criminal in nature, and there is enough evidence, the parties involved in the case can be prosecuted. If the case is determined to be non-criminal in nature, the State can pursue an administrative action or a civil suit. An administrative action or a civil suit can proceed at the same time a case is being assessed for criminal intent. An investigation of the case may be carried out simultaneously by both the civil and criminal investigators.

An administrative procedure is provided in Chapter 22, Article 18, Section 13 of the West Virginia Code which allows the Director of the WVDEP to issue subpoenas and subpoenas duces tecum to compel the production of records, and the appearance and testimony of witnesses.

The administrative procedure utilized to secure entry to a facility or site under Chapter 22, Article 18 of the WVCode is the on-site presentation by the Environmental Inspector, to the person denying entry, of a Unilateral Order requiring that person to allow entry. The Order is issued by the Chief of the OWM. The Order compels the party denying entry to allow the Environmental Inspector access to the facility. Failure to comply is a violation of an Administrative Order and subjects the violator to a civil penalty. Such Orders have been issued and are effective tools in gaining entry.

2. **Enforcement of Corrective Action Conditions Outlined in Operating and Post-Closure Permits**

The State is not yet authorized for the Federal corrective action program under the Hazardous and Solid Waste Amendments of 1984 (HSWA). However, the State does have corrective actions on-going under State authorities, and performs inspections to assess compliance with consent agreements or orders under which the corrective actions are being conducted.

As a prerequisite for receiving a permit for a land disposal unit, the facility owner/operator has to submit a post-closure plan that outlines specific requirements set down in 40 CFR Section 265.118 as referenced by 33 CSR 20. The inspectors oversee the facility owner/operator closure and post-closure operations.

3. **Penalties and Violations**

In March of 1996, the EPA updated and finalized its Hazardous Waste Civil Enforcement Response Policy (ERP) establishing two categories of RCRA violations based on the nature of the violation, as well as the past history and present conduct of the violator. The policy considers the violator as either a Significant Non-Complier (SNC) or as a Secondary Violator (SV). A SNC generally commits violations that have caused an actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents (environmental impact), deviate subtantially from the terms of a permit, order, agreement or from RCRA statute or regulatory requiremnts or demonstrate a chronic or recalcitrant violation behavior. Secondary Violators (SVs) commit violations that are minor in environmental or health impacts. In many cases, these violations are routine, paper-work violations with little potential for harm. Usually, these violations are quickly and easily remedied upon their discovery, or are resolved through informal enforcement actions by the CAERS. A facility classified as an SV should not have a history of recalcitrant or non-compliant conduct.

If the violator does not respond to the Environmental Inspector's NOV, an injunction may be used to force termination of the practice that is causing the major violation, if the violation poses an imminent and substantial threat to human health or the environment. Other enforcement actions may also be pursued, including issuance of Orders with penalties or Civil Complaint or criminal referrals. These steps are carried out until relief or compliance is achieved along with the assurance of safety to public health and the environment. The various steps of the compliance monitoring and enforcement process are outlined in the flow chart shown in Appendix J of Section X.

A CEI Report with a NOV or more severe action such as an Injunction Order may be issued. A CEI Report with NOV is initially issued after collaboration between the Environmental Inspector and the CAERS Inspector Supervisor.

Following the issuance of the NOV, and an Enforcement Referral by an inspector, preparation of an Administrative Order, with a penalty, may begin. Preparation of an Order is begun if there is a significant failure to comply or if the violation was serious or repeated. A criminal referral may also be made to the EPA's office if the evidence warrants. Depending on the sensitivity and urgency of the situation, the Director of the WVDEP or Chief, OWM, and the EPA may collaborate in order to solve the problem.

Once an NOV is issued against a facility, depending upon the severity of the violation, and the time period needed for a violator to return to compliance, the owner or operator may request a conference with the CAERS. The conference may be to clarify the nature of the violation or enhance the owner/operator's understanding of the applicable RCRA regulations. If the violator requests a conference, Environmental Inspectors meet with facility representatives to explain the violations.

The NOV and the CEI report identify the violation and advise the violator that he or she may be subject to prosecution and penalty. The violator is advised that certain corrective actions must be undertaken to remedy the violation or else the department will seek legal sanctions, including

the imposition of civil and/or criminal penalties. Usually, the violator is requested in the CEI Report to provide a follow-up report or letter describing the actions taken by the facility operator to correct or reduce the violation. A follow-up inspection is routinely made by the Environmental Inspector to determine if the facility returned to compliance as specified in the NOV. If a certain timetable for a series of corrective actions is required, a Consent Order can be written that includes a timetable of compliance actions or milestones which the violator must meet.

Various methods used by the CAERS to document a facility's continued violation are:

- Field inspections;
- Violator self-report;
- Violator admission at conference; and
- Surveillance activities.

If the violator fails to comply within the time period specified in the NOV or Consent Order, the CAERS may pursue other enforcement actions including additional Administrative Orders, and other civil or criminal actions, such as injunctions and closure. For example, if a facility holds a TSD permit, and a particular handling practice is in violation, the CAERS may issue a NOV for that particular practice. Injunctive relief may be pursued, if necessary, to shut down the entire facility to achieve compliance.

The various steps in the enforcement process are shown in the flow chart found in Section X, Appendix J.

During a CEI, the inspector will make decisions for any enforcement or compliance action under the constraints of the laws and rules of the State. The inspector's observations at the facility or site will dictate the nature of compliance actions that are deemed necessary. In reality, the severity of any violation is situation specific, and therefore, a field inspector must rely on a variety of factors including the number of offenses, chronic violations, magnitude of violations, and the attitude of the offender. The inspector must act on those factors. Suggestions are made to the facility operator for correcting violations and the inspector notes the violations in the CEI Report. The violations become a part of the facility record and are entered into RCRIS.

Minor violations which are remedied during the inspection are still noted in the inspection report and become a part of the facility record.

As previously mentioned, the inspector sends the facility an NOV which usually has a written compliance timetable for corrective action that is to be met by the facility owners/operators. Often, the owners/operators will be required to submit a report detailing the steps taken by the operator to bring the facility operation into compliance and assurances made for continued compliance.

If these minor violations continue or are not corrected by the time a follow-up inspection is conducted, or within a time frame as required by the NOV, then further action may be taken against the facility, including administrative Orders with, or without, penalties. A cover letter is usually sent with the administrative Order which suggests that the facility request a meeting between the facility and the EU to discuss settlement of the order in addition to the facility's problems and solutions for compliance.

Depending on the noncompliance situation, the inspector may defer informal enforcement actions to a more formal action such as the issuance of an Administrative Order. When the decision is made to issue an administrative Order, the following steps are taken:

- The Inspector confers with the Inspector Supervisor and on occasion with the Assistant Chief of CAERS;

- The Inspector prepares an Enforcement referral form which is signed off on by the Inspector Supervisor;
- The Assistant Chief of CAERS reviews the CEI along with the case referral, and sends the package to the EU Secretary who logs the case in the Enforcement Division's log book and gives the case to the EU staff person, as assigned by the Enforcement Unit Leader;
- The EU staff person prepares an Administrative Order (AO), which is approved by the Inspector, the Enforcment Unit Leader, the Assistant Chief and the Chief, who signs the AO;
- The AO is sent to the violator facility; and
- the case is resolved when a signed AO has been complied with or, if not resolved, the case is referred to OLS or, on occasion, to EPA.

The following discussion briefly describes the enforcement discretion applied by Environmental Inspectors during the performance of their duties:

> The decision on a course of action is dictated by the gravity of the noncompliance and the violated rule or regulation. If, in fact, the facility or the site operator, is in violation of any aspect of the regulation or law, the facility inspector will note that deficiency and make a decision regarding further enforcement action. As always, the important criteria for an appropriate response are the effects of the violation on public health and the environment.

In a situation where an inspector must consult with his immediate supervisor or chief, a course of action is decided by the establishment of facts in the case. However, immediate action on a violation is carried out by the inspector in the necessity of immediate action when there is a serious threat to public health or the environment.

4. Time frames for Enforcement Actions

The State follows the EPA guidelines for timely and appropriate enforcement as found in the Hazardous Waste Civil Enforcement Response Policy. (ERP). See the Flow Chart in Appendix J of Section X for an overview of State time-frames.

5. Enforcement Resources

The EU maintains three full-time Staff to write AO's for cases referred by the 11 Environmental Inspectors. The primary duties of these EU Staff persons, known as Environmental Resource Specialists (ERS), are to write the basis and the terms of the AO's and negotiate a formal agreement, and to prepare civil referrals with the OLS as needed. Additional responsibilities of the EU ERS's are:

- To aid in the review of environmental work plans submitted pursuant to the AO;
- To attempt to apply consistency to administrative settlements and environmental remedies; and
- To review the Federal Regulations and State rules and evaluate their meaning and application.

The addition to the HWP of Federal regulations such as universal waste, used oil, and land disposal restrictions present an additional challenge in developing expertise in new areas of regulatory compliance. The challenge is not insurmountable as EPA is expected to assist in training and participate as a resource to provide timely answers for regulatory and policy questions. In fact, the regulated community is faced with the same challenge and can be assisted to comprehend and follow the new regulations with the help of both the EPA and the State's Waste Minimization Team.

SECTION VIII
ESTIMATED REGULATED ACTIVITIES

A. Generators

As seen in Table 12 there are a total of 5,440 generators including large, small, and conditionally exempt generators. In the base program of 1985 there were 64 generators. As of this PD, the expanded universe includes all sizes of generators and represents an increase in generators of ***85 times*** the original number. State data for 1999 shows 115 Large Quantity Generators operating in West Virginia. In real terms, that represents nearly a doubling in the number of large quantity generators from 1985 to 1999. That is approximately an increase of 180% in LQGs over the base program.

TABLE 12
NUMBER OF GENERATORS

Generators	Base Program 1985	1999 (OCT)
Large Quantity Generators	64	115
Small Quantity Generators		1375
Conditionally Exempt Generators		3950
Total Generators	64	5440

(Note: These are categories as defined in Federal RCRA regulations.)

B. Transporters

There are 28 stand-alone transporters out of 35 total transporters which have received EPA identification numbers as of 1999. A current list of transporters is provided in Appendix F of Section X.

C. Permits

There are different categories of permits. The number of permits, by type, is shown in Table 13. There are a total of 23 facilities regulated under the HWMS. Sixteen facilities have operating permits. Two facilities are operating under interim staus. In addition there are five facilities which have post-closure care permits. These facilities are listed in Appendix E of Section X.

TABLE 13
NUMBER & TYPE OF PERMITS

Type of Permit	Number Issued	Number Pending	Total Permits
Operating	16	2	23
Post-Closure	5	0	0
Total	21	2	23

D. Type and Quantity of Hazardous Waste

Data on annual quantities of hazardous wastes in West Virginia are available for 1995 and 1997. The quantities for different categories is summarized in Table 14.

TABLE 14
TYPE AND QUANTITIES OF HAZARDOUS WASTE

CATEGORY	Quantities in Tons		
	1995	1996	1997
In-State Generated	8,488,030	No Data	147,213
In-State Treatment	8,395,116		46,111
Exports	73,137		106,422
Imports	2,881		3,546

imports are hazardous waste brought into West Virginia from foreign countries
exports are hazardous wastes shipped from West Virginia to foreign countries.

The data summary in this Section is based on a review of data collected in EPA's 1997 National Biennial Reporting System (BRS). The collected data was retrieved in report form and has been interpreted as follows:

The most recent BRS report indicated that there were 119 LQG facilities maintained West Virginia EPA ID numbers. Of this total, eight (8) facilities were listed as generating 0 tons of hazardous waste. Presumably, these 8 facilities were inactive during the reporting period. The remaining 111 LQG facilities generated all hazardous wastes quantities recorded in the 1997 BRS database. Table 12 lists 115 LQGs indiating current status. *Note: Hazardous Waste amounts generated by SQGs and CESQGs are not recorded in BRS. Also, for the purposes of this BRS data interpretation effort, imports are hazardous waste brought into West Virginia from foreign countries and exports are hazardous wastes shipped from West Virginia to foreign countries.*

Four (4) facilities received hazardous waste from off-site. Of these four facilities, two (2) facilities received hazardous waste from other states and the remaining 2 facilities received hazardous waste as imports.

Nine (9) facilities managed hazardous waste on-site; that is nine facilities treated hazardous waste in permitted units.

Two (2) facilities received some hazardous waste from off-site and managed it on-site, in addition to the hazardous waste that they generated on-site. *No commercial hazardous waste TSDs are sited in West Virginia.*

114 facilities shipped hazardous waste off-site. Of these 114 facilities, 110 facilities shipped hazardous waste off-site to other states, and 21 facilities shipped hazardous waste off-site as exports.

West Virginia ranks 35th out of 50 States in the amount of hazardous waste generated, according to the 1997 BRS data. Overall, the number of permitted TSDs has declined since the original Program Description was written. The number of LQGs has grown and now is relatively stable.

Comparisons between the databases of 1985 and 1997 show the growth and maturity of the HWMP, however, special care should be taken to avoid over analysis of the data due to the evolution in the measuring methodologies and parameters during that time. BRS data for West Virginia for 1997 is provided in Appendix M of Section X to enable the reader to compare the changes in the RCRA regulated universe. Even so, drawing conclusions from the different years should be avoided. Information from the 1999 EPA National Biennial Report regarding hazardous waste generation and management in West Virginia will be available in the year 2001.

SECTION IX
COPIES OF STATE FORMS AND COORDINATION WITH OTHER AGENCIES

The Memorandum of Agreement (MOA) outlines how the State and EPA will coordinate activities. A copy of this document may be found in Appendix A of Section X. Within the State, coordination to enforce the HWP occurs among the WVDEP and the DOH and PSC. The specific activities of these separate state agencies regarding the HWP are detailed in the interagency MOU's in Appendix C amd D of Section X. Coordination among the agencies occurs between the Assistant Chief or his/her designee of the CAERS of the OWM and the designee of the DOH and the PSC. Currently, the DOH contact is the State Safety Officer and the PSC contact is the Manager for Railway Safety. Telephone discussions, computer e-mail messages and inter-office mailings comprise the majority of methods for inter-agency communication. On occassion, compliance inspection reports and other specific facility data are exchanged between the state agecies, as issues of RCRA compliance arise concernng transporters, TSDs or generators.

The State form of primary note is the Notice of Violation form found below:

- Forms utilized by the Compliance Assurance and Emergency Response, Compliance Monitoring Unit are the follwowing EPA forms:

  - Hazardous Waste Manifest (EPA Form);
  - Notification of Regulated Waste Activity (EPA Form);

- The Permitting Section uses all standard EPA forms such as the Part A Form.

DIVISION OF ENVIRONMENTAL PROTECTION

CECIL H. UNDERWOOD
GOVERNOR

1356 Hansford Street
Charleston, WV 25301-1401

MICHAEL C. CASTLE
DIRECTOR

NOTICE OF VIOLATION

DATE: TIME:

ISSUED TO:

EPA I.D.#:

FACILITY MAILING ADDRESS:

FACILITY REPRESENTATIVE:

On the date and time specified, an authorized agent of the Chief of the Office of Waste Management conducted an inspection of the facility described above in accordance with West Virginia Code, Chapter 22, Section 18 and/or an Order or Permit issued pursuant to §22-18. During that inspection the following violation(s) were noted:

1. A. (Regulation)
   B. (Facts)
2. A.
   B.
3. A.
   B.

In order to attain compliance with the cited Code and/or Regulations, you must perform the following remedial actions:

A copy of this Notice of Violation will be forwarded to the Enforcement Unit of the Office of Waste Management. The issuance of this Notice may result in an administrative civil penalty being levied in accordance with West Virginia Code §22-18-17.

District Phone: (304) 558-5989

District Fax: (304) 558-0256

Issued by:

Title: Environmental Inspector

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

DIVISION OF ENVIRONMENTAL PROTECTION

Office of Waste Management

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

NOTICE OF VIOLATION

DATE: _____ TIME: _____

ISSUED TO: _____

EPA ID#: _____

FACILITY MAILING ADDRESS: _____

FACILITY REPRESENTATIVE: _____

On the date and time specified, an authorized agent of the Chief of the Office of Waste Management conducted an inspection of the facility described above in accordance with West Virginia Code, Chapter 20, Article 5E and/or an Order or Permit issued pursuant to §20-5E. During that inspection the following violation(s) were noted:

1. A. (Regulation) _____

   B. (Facts) _____

   _____

   A. _____

   B. _____

   _____

3. A. _____

   B. _____

   _____

In order to attain compliance with the cited Code and/or Regulations, you must perform the following remedial actions:

_____

_____

_____

_____

_____

_____

_____

_____

A copy of this Notice of Violation will be forwarded to the Enforcement Unit of the Office of Waste Management. The issuance of this Notice may result in an administrative civil penalty being levied in accordance with West Virginia Code §20-5E-16(a).

District Phone: _____ Issued By: _____

Fax: _____ Title: _____

DIVISION OF ENVIRONMENTAL PROTECTION

CECIL H. UNDERWOOD
GOVERNOR

Office of Waste Management

JOHN E. CAFFREY
DIRECTOR

CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR
COMPLIANCE EVALUATION INSPECTION

The regulations for this inspection are the WV Hazardous Management Act (Chapter 22-18), 33CSR 20 Sections 13, 14 & Appendix 1, Section 2, & 40CFR 260-265, 273, & 279 which apply to facilities generating <100kg/month of Hazardous Waste (HW).

COMPANY NAME: _____

MAILING ADDRESS: _____ EPA ID#: _____

_____ NON-HANDLER:(Y/N) _____

LOCATION: _____ COUNTY: _____

COMPANY CONTACT: _____ TITLE: _____

PHONE: _____ ADVISED OF INSPECTION AUTHORITY: _____

DATE INSPECTED: _____ TIME OF INSPECTION: _____

DATE PREPARED: _____ PREPARED BY: _____

INSPECTORS: (1) _____ VIOLATIONS:(Y/N) _____

(2) _____ ACTION TAKEN: _____

(NOV / Adm. Enf. Ref. / Other)

FACILITY DESCRIPTION: _____

Hazardous Wastes (as Notified or updated) Qty/Mo. Disposal Co./Method

_____

_____

_____

33CSR20 Section		YES	NO	N/A
Appx. 1, 2.2	Has facility made a HW Determination for all waste?			
Appx. 1, 2.3	Has facility notified for all HW streams?			
Appx. 1, 2.4	Is facility storing <1000 kg non-acute HW on-site?			
	Is facility storing <100 kg acute HW on-site?			
Appx. 1, 2.5	Does facility have written record on-site of quantity/type/date/final disposition for all HW generated?			
Appx. 1, 2.6	Does facility treat/recycle/reclaim/reuse the HW?			
	Does facility ensure delivery of HW to permitted TSDF?			
Appx. 1, 2.7	Does facility mix non-HW with HW resulting in non-characteristic waste?			
Appx 1, 2.7.a	Does facility mix non-HW with quantities of HW initially greater than 2.4 amounts?			
Appx 1 2.7.b	Does facility mix HW with used oil?			
13	Is facility in compliance with all applicable universal waste requirements?			
14	Is facility in compliance with all applicable used oil requirements?			

COMMENTS: _____

_____

_____

WASTE MINIMIZATION PRACTICES: _____

_____

DIVISION OF ENVIRONMENTAL PROTECTION

CECIL H. UNDERWOOD
GOVERNOR

Office of Waste Management

JOHN E. CAFFREY
DIRECTOR

SMALL QUANTITY GENERATOR--COMPLIANCE EVALUATION INSPECTION

The regulations for this inspection are the WV Hazardous Waste Management Act (Chapter 22-18), 33CSR20 Sections 13, 14 & Appendix 1, Section 1, & 40CFR 260-265,273, & 279 which apply to facilities generating >100kg/month but <1000kg/month of Hazardous Waste (HW).

COMPANY NAME:_____ EPA ID#:_____

MAILING ADDRESS:_____ LOCATION:_____

_____ COUNTY:_____ PHONE:_____

COMPANY CONTACT:_____ TITLE:_____ ADV. OF AUTHORITY:_

DATE INSPECTED:_____ INSPECTORS: (1)_____ DATE PREPARED:_____

TIME OF INSPECTION:_____ (2)_____ PREPARED BY:_____

VIOLATIONS:(Y/N)_____ ACTION TAKEN:_____ (NOV/Adm.Enf.Ref./Other) FACILITY DESCRIPTION:_____

Hazardous Wastes (as Notified or updated) Qty/Mo. Disposal Co./Method

_____

_____

_____

33CSR20 Section		YES	NO	N/A
Appx. 1, 1.2	Has facility made HW Determination for all waste?			
Appx. 1, 1.3	Has facility notified for all HW streams?			
Appx. 1, 1.5	All HW on-site <180 days (<270 days if TSDF >200miles & <6000kg HW on-site)?			
Appx. 1, 1.6.a	All containers of HW in good condition?			
Appx. 1, 1.6.b	All containers of HW closed except when adding / removing waste?			
Appx. 1, 1.6.c	All containers of HW handled such that they will not rupture / leak?			
Appx. 1, 1.6.d	Are HW container storage areas inspected weekly and leaks/deterioration remediated upon detection?			
Appx. 1, 1.6.e	Incompatible wastes placed in separate containers?			
Appx. 1, 1.6.f	Containers for incompatible HW separated by dike, wall, berm, etc.?			
Appx. 1, 1.7	If facility accumulates HW in tanks, is facility complying with 40CFR §265.201?			
Appx. 1, 1.8	If facility permanently closed a container/tank storage area, did facility comply with 40CFR §265.114?			
Appx. 1, 1.9.a	All containers of HW clearly and visibly marked with accumulation start date?			
Appx. 1, 1.9.b	All containers / tanks of HW clearly labeled or marked "Hazardous Waste"?			
Appx. 1, 1.10.a	Is waste reclaimed under contract specifying waste type and shipment frequency?			
Appx. 1, 1.10.b	Is transport vehicle owned and operated by the reclaimer?			
Appx. 1, 1.10.c	Copy of reclamation agreement kept on site for at least 3 years?			
Appx. 1, 1.11.a	Copy of each properly completed manifest kept on site for at least 3 years if no reclamation agreement?			
Appx. 1, 1.11.b	Copies of any test results, waste analyses, etc. kept on site for at least 3 years?			
Appx. 1, 1.11.d	Copy sent to notify Chief if signed manifest not returned from TSDF in 60 days?			
Appx. 1, 1.12	Does operating manner minimize risk of fire / explosion / unplanned release?			
Appx. 1, 1.12.a	Adequate alarm system, fire protection equipment & spill control equipment?			
Appx. 1, 1.12.b	Are the above tested and maintained to assure proper operation in emergency?			
Appx. 1, 1.12.c	When handling HW do all persons involved have immediate access to the above?			
Appx. 1, 1.12.d	Adequate aisle space for movement of personnel & emergency equipment?			
Appx. 1, 1.12.e	Arrangements with all appropriate local & state emergency response agencies?			
Appx. 1, 1.12.f	Documentation in operating record for any agency declining such arrangement?			
Appx. 1, 1.12.g	At least one designated emergency coordinator on site or on call at all times?			
Appx. 1, 1.12.h	All required emergency information posted next to a telephone?			
Appx. 1, 1.12.i	Do all employees know proper waste handling procedures & emergency procedures?			
Appx. 1, 1.12.j	Does emergency coordinator know proper responses which are his duty to initiate in an emergency?			
Appx. 1, 1.12.k	For release of HW affecting outside area, did facility properly report to National Response Center?			
13	Is facility in compliance with all applicable universal waste requirements?			
14	Is facility in compliance with all applicable used oil requirements?			

COMMENTS:_____

DIVISION OF ENVIRONMENTAL PROTECTION

CECIL H. UNDERWOOD
GOVERNOR

Office of Waste Management

JOHN E. CAFFREY
DIRECTOR

SMALL QUANTITY GENERATOR--HAZARDOUS WASTE TANK COMPLIANCE INSPECTION
(To be used in conjunction with SQG CEI form)

The regulations for this inspection are the WV Hazardous Management Act (Chapter 22-18), 33 CSR 20 Appendix 1, Section 1.7 & 40CFR 260-265, 273 & 279 which apply to facilities generating between 100 and 1000 kg/month of Hazardous Waste (HW).

COMPANY NAME: _____ EPA ID#: _____

INSPECTION DATE: _____ INSPECTOR(S): _____

Hazardous Wastes Treated/Stored/Disposed of in Tanks	Tank # or Description	Qty/Mo.

REFERENCE		YES	NO	N/A
33CSR20 1.7	Is SQG's storing hazardous waste in tanks in compliance with 40 CFR § 265.201?			
40CFR 265.201(a)	Is HW accumulated in tank(s) <180 days (or <270 if shipped >200 miles)?			
	Is less than a total of 6,000Kg (13,000lbs) of non-acute HW accumulating on site?			
265.201(b)(1)	Is treatment or storage of HW in tanks in compliance with 265.17(b)?			
265.17(b)	Does the treatment/storage/disposal of D001 or D003 wastes or commingling of incompatible wastes/materials:	--	--	--
265.17(b)(1)	Generate extreme heat, pressure, fire, explosion, or violent reaction?			
(2)	Produce uncontrolled toxic mists, fumes, dusts, or gasses in sufficient quantities to threaten human health?			
(3)	Produce uncontrolled flammable fumes, or gasses in sufficient quantities to pose a risk of fire or explosions?			
(4)	Damage the structural integrity of the device or facility containing the waste?			
(5)	Through other like means, threaten human health or the environment?			
265.201(b)(2)	Are hazardous wastes or treatment reagents placed in a tank where they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end or its intended life?			
(3)	Do uncovered tanks have a minimum of 2 ft (60 cm) freeboard or containment structure (dike or trench), drainage control system, or diversion structure (standby tank) with a capacity equal to or exceeding the top 2 ft of the tank?			
(4)	Are HW tank(s) with continuous feed equipped with means to stop inflow (feed cut-off or by-pass system to a standby tank)?			
265.201(c)	Does the generator inspect the following (where present):	--	--	--
256.201(c)(1)	Discharge control equipment (cut-off/by-pass/drainage systems) each operating day to ensure good working order?			
(2)	Data gathered from monitoring equip. (pres/temp gauges) each operating day to ensure tank is operated according to design?			
(3)	Level of waste in the tank each operating day to ensure compliance with 265.210(b)(3)?			
(4)	Construction materials of tank weekly to detect corrosion or leaking fixtures or seams?			
(5)	Construction of and area immediately surrounding dikes, etc. weekly to detect erosion or obvious signs of leakage?			
265.15(c)	Does owner/operator remedy any deterioration or malfunction found?			
265.201(d)	Upon facility closure does generator remove all HW from tanks, discharge control equip., and dikes?			
265.201(e)(1)	For ignitable or reactive Hazardous Waste(s), is the waste in the tank:			
265.201(e)(1)(i)	Treated, rendered or mixed before or immediately after placement in a tank so that:			
265.201(e)(1)(i)(A)	Resulting waste or mixture no longer meets definition of ignitable or reactive waste?			
(B)	And 265.17(b) is complied with?			
265.201(e)(1)(ii)	Stored/treated such that it is protected from any material/conditions that may cause the waste to ignite or react?			
(iii)	Placed in tank(s) used solely for emergencies?			
265.201(e)(2)	For ignitable or reactive HW treated/stored in covered tanks, is the o/o in compliance with NFPA buffer zone requirements?			
265.201(f)(1)	If incompatible wastes are placed in the same tank, is the generator in compliance with 265.17(b)?			
265.201(f)(2)	If HW is placed in an unwashed tank that previously held incompatible waste/material, is generator complying with 265.17(b)?			

DIVISION OF ENVIRONMENTAL PROTECTION

CECIL H UNDERWOOD
GOVERNOR

Office of Waste Management

JOHN E. CAFFREY
DIRECTOR

LARGE QUANTITY GENERATOR--COMPLIANCE EVALUATION INSPECTION

The regulations for this inspection are the WV Hazardous Waste Management Act (22-18), 33 CSR 20 & 40 CFR 260-265, 273 & 279. These regulations apply to facilities generating >1000kg/month of Hazardous Waste (HW).

COMPANY:_____ EPA ID#:_____

MAILING ADDRESS:_____ LOCATION:_____

_____ COUNTY:_____ PHONE:_____

COMPANY CONTACT:_____ TITLE:_____ ADV. OF AUTHORITY:_

DATE INSPECTED:_____ INSPECTORS: (1)_____ DATE PREPARED:_____

TIME OF INSPECTION:_____ (2)_____ PREPARED BY:_____

VIOLATIONS:(Y/N)____ ACTION TAKEN:_____ FACILITY DESCRIPTION:_____

(NOV/Adm.Enf.Ref./Other)

Hazardous Waste Codes	Waste Description	Disposal Company / Method

WASTE MINIMIZATION:

COMMENTS:

Is facility in compliance with all applicable universal waste regulations? (33 CSR 20 Section 13) _____

Is facility in compliance with all applicable waste oil regulations? (33 CSR 20 Section 14) _____

40 CFR Part		YES	NO	N/A
262.11	Has facility made a HW determination for all waste streams?			
262.12	Has facility notified for all HW streams?			
262.10	Is facility treating, disposing, or storing HW >90 days?			
262.20(a)	Is UHW Manifest OMB control #2050-0039 on EPA Form 8700-22 used?			
262.20(a)	Are all manifests properly completed?			
262 Subpart C	Before offering HW for transport off-site, does generator...			
262.30	Package in proper containers?			
262.31	Label with DOT sticker or placard?			
262.32	Mark with HW sticker or placard?			
262.33	Does generator offer initial transporter appropriate placards?			
262.34	**Accumulation Time:**	--	-	--
262.34(a)	Is all HW within 90 days shipped off-site or placed in permitted or interim-status area on-site?			
262.34(a)(1)	Are all containers closed, in good condition and compatible with their contents?			
" "	Are container areas inspected at least weekly?			
" "	Are containers holding ignitable or reactive wastes located at least 50 ft from facility property line?			
262.34(a)(2)	Is accumulation start date clearly marked and visible on each container?			
262.34(a)(3)	Is each on-site HW container & tank labeled "Hazardous Waste"?			
262.34(a)(4)	Is aisle space sufficient (minimum 1 container width)?			
265 Subpart C	**Preparedness & Prevention:**	--	-	--
" "	Has generator installed...			
" "	Instructive communications or alarm system for facility personnel?			
" "	Device at generation points for summoning local emergency response organization?			
" "	Fire control equip. & adequate suppression chemicals or water?			
" "	Is facility maintained & operated to minimize risk of fire/explosion/release of HW?			
" "	Has facility made arrangements with local emergency response agencies/hospitals/contractors?			
265 Subpart D	**Contingency Plan:**	--	-	--
" "	Does the contingency plan contain...			
" "	Detailed emergency procedures facility personnel will implement in response to fire/explosion/release of HW?			
"	Detailed description of arrangements with local emergency organizations?			
" "	Updated names, addresses & phone #'s of emergency coordinator(s) on 24 hr basis?			
" "	A listing of appropriate emergency equipment and evacuation plan?			
" "	Has the plan or update been submitted to local emergency response organizations and does facility maintain a copy on-site?			
" "	Are the provisions of the plan carried out immediately whenever a fire/explosion/release of HW occurs?			
" "	Are facility emergency coordinators familiar with their applicable responsibilities in the event of an emergency?			
265.16	**Training:**	--	-	--
265.16(d)(1)	Are records of names & job titles maintained for personnel involved in HW management?			
265.16(d)(2)	Written position description for above personnel?			
265.16(d)(3)	Written description of training for above personnel?			
265.16(a)(3)	Does training include (where applicable)...			
265.16(a)(3)i	Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment?			
265.16(a)(3)ii	Key parameters for automatic waste feed cut-off systems?			
265.16(a)(3)iii	Location and use of communications or alarm systems?			
265.16(a)(3)iv	Response to fires, explosions, spills, and groundwater contamination incidents?			
265.16(a)(3)v	Procedures prior to and during shutdown of operations?			
265.16(c)	Have facility personnel completed an annual review of initial training?			
265.16(d)(4)	Does facility maintain records documenting the required training has been completed by above personnel?			
262.34(c)	**Satellite Area Accumulation:**	--	-	--
265 Subpart I	Are all satellite containers closed, in good condition, and compatible with contents?			
262.34(c)(1)ii	Are all satellite containers marked with the words "Hazardous Waste" or other words identifying the contents?			
262.34(c)(2)	For excess amounts of HW, is generator complying with 262.34(a) within 3 days of start of excess accumulation?			
262.34(c)(2)	For excess amounts of HW, is each container marked with date of start of excess accumulation and properly labelled?			
262 Subpart D	**Record Keeping & Reporting:**	--	-	--
" "	Does generator maintain on-site...			
62.40(a)	Copies of all signed manifests for a minimum of 3 years from date of initial transport ?			
262.40(b)	Copies of each annual or biennial report for a minimum of 3 years from report due date?			
262.40(c)	Copies of all test results and waste determinations for a minimum of 3 years from last date transported off-site?			
262.42	Does generator follow appropriate reporting procedures for manifest exceptions and discrepancies?			

DIVISION OF ENVIRONMENTAL PROTECTION

Office of Waste Management

CECIL H. UNDERWOOD
GOVERNOR

JOHN E. CAFFREY
DIRECTOR

COMPLIANCE EVALUATION INSPECTION--ADDITIONAL COMMENTS PAGE

WV Division of Environmental Protection
Office of Waste Management

GROUNDWATER MONITORING--FIELD EVALUATION CHECKLIST

The regulations for this inspection are the WV Hazardous Waste Management Act (20-18), 33 CSR 20, & 40 CFR 260-265.
These regulations apply to all facilities having groundwater monitoring requirements.

COMPANY:_____ EPA ID#:_____

MAILING ADDRESS:_____ LOCATION:_____

_____ COUNTY:_____ PHONE:_____

COMPANY CONTACT:_____ TITLE:_____ ADV. OF AUTHORITY:__

DATE INSPECTED:_____ INSPECTORS: (1)_____ DATE PREPARED:_____

TIME OF INSPECTION:_____ (2)_____ PREPARED BY:_____

VIOLATIONS:(Y/N)____ ACTION TAKEN:_____ FACILITY DESCRIPTION:_____

Hazardous Waste Codes	Waste Description	Disposal Company / Method

COMMENTS:

40 CFR Part	Description of Conditions to be met:	YES	NO	N
	Are numbers, depths, and locations of all monitoring wells in agreement with those reported in facility's monitoring plan?			
	Are upper portion of all boreholes sealed with concrete to prevent infiltration from the surface?			
	Are all wells fitted with an above ground protective device?			
	Are protective covers fitted with locks to prevent tampering?			
	Are measurements of both depth to standing water and depth to bottom of well made?			
	Are measurements taken to the 0.01 feet?			
	List device used for depth measurements:			
	For each well is there a reference point established by a licensed surveyor?			
	Is the measuring equipment properly cleaned between well locations to prevent cross contamination?			
	Are procedures used which will detect light phase immiscible layers?			
	Are procedures used which will detect heavy phase immiscible layers?			
	If immiscible layers are present, are they sampled separately prior to well evacuation?			
	If immiscible layers are present, do sampling procedures used minimize mixing with water soluble phases?			
	Are low yielding wells evacuated to dryness?			
	Are high yielding wells evacuated so that at least three casing volumes are removed?			
	List device(s) used to evacuate the wells:			
	If any problems are encountered (e.g. equipment malfunction) are they noted in a field logbook?			
	For low yielding wells, are samples for volitiles, pH, and red/ox potential drawn first after the well recovers?			
	Are samples withdrawn with either fluorocarbon/resins or stainless steel sampling devices?			
	Are sampling devices either bottom valve bailers or positive gas displacement bladder pumps?			
	For bailers, is fluorocarbon/resin coated wire, single strand stainless steel wire or monofilament used to raise and lower the			
	If bladder pumps are used, are they operated in a continuous manner to prevent aeration of the sample?			
	If bailers are used, are they lowered slowly to prevent degassing of the water?			
	If bailers are used, are the contents transferred to the sample container in a way that minimizes agitation and areation?			
	Is care taken to avoid placing clean sampling equipment on the ground or other contaminated surfaces prior to insertion into the			
	If dedicated sampling equipment is not used, is equipment disassembled and thoroughly cleaned between samples?			
	If samples are for inorganic analysis, does the cleaning procedure include dilute acid rinse (HNO_3 or HCl)?			
	If samples are for organic analysis, does the cleaning procedure include the following sequential steps:			
	Non-phosphate detergent wash?			
	Tap water rinse?			
	Distilled/de-ionized water rinse?			
	Acetone rinse?			
	Pesticide-grade hexane rinse?			
	Is sampling equipment thoroughly dry before use?			
	Are equipment blanks taken to ensure that sample cross-contamination has not occurred?			
	If volatile samples are taken with a positive gas displacement bladder pump, are pumping rates < 100 ml/min?			
§265.90(a)	Are the following parameters determined in the field?			
§265.92(a)	pH?			
§265.93(d)(4)	Temperature?			
§270.14(c)(4)	Specific conductivity			
	Redox potential?			
	Chlorine?			
	Dissolved oxygen?			
	Turbidity?			
	Other (specify):			
	For in-situ determinations, are they made after well evacuation and sample removal?			
	If sample is withdrawn from the well, is parameter measured from a split portion?			
	Is monitoring equipment calibrated according to manufacturer's specifications and consistent with SW-846?			
	Is the date, procedure, and maintenance for equipment calibration documented in the field logbook?			
	Are samples transferred from the sampling device directly to their compatible containers?			
	Are sample containers for metals (inorganics) analyses polyethylene with polypropylene caps or glass with fluorocarbonresin-			
	Are sample containers for organics analysis glass bottles with fluorocarbonresin-lined caps?			
	Are the sample containers for metal analyses cleaned using these sequential steps?			
	Non-phosphate detergent wash?			
	1:1 nitric acid rinse?			
	Tap water rinse?			
	1:1 hydrochloric acid rinse?			
	Tap water rinse?			
	Distilled/de-ionized water rinse?			
	Are the sample containers for organic analyses cleaned using these sequential steps?			
	Non-phosphate detergent/hot water wash?			
	Tap water rinse?			
	Distilled/de-ionized water rinse?			
	Acetone rinse?			
	Pesticide-grade hexane rinse?			

40 CFR Part	Description of Conditions to be met:	YES	NO	N
	Are trip blanks used for each sammple container type to verify cleanliness?			
§265.90(a)	Are samples for the following analyses cooled to 4°C?			
§265.92(a)	TOC?			
§265.93(d)(4)	TOX?			
?70.14(c)(4)	Chloride?			
	Phenols?			
	Sulfate?			
	Nitrate?			
	Coliform bacteria?			
	Cyanide?			
	Oil & grease?			
	Hazardous constituents (§ 261, Appendix VIII)?			
	Are samples for the following analysse field acidified to pH <2 with HNO_3?			
	Iron?			
	Manganese?			
	Sodium?			
	Total metals?			
	Dissolved metals?			
	Fluoride?			
	Endrin?			
	Lindane?			
	Methoxychlor?			
	Toxaphene?			
	2,4-D?			
	2,4,5-TP Silvex?			
	Radium?			
	Gross Alpha?			
	Gross Beta?			
	Are samples for the following analyses field acidified to pH <2 with H_2SO_4?			
	Phenols?			
	Oil & grease?			
	Are samples for TOC analyses field acidified to pH <2 with HCl?			
	Are samples for TOX analyses preserved with 1 ml of 1.1M sodium sulfite?			
	Are samples for cyanide analysis preserved with NaOH to pH >12?			
	Are organic samples handled without filtering?			
	Are samples for volatile organics transferred to the appropriate vials to eliminate headspace over the sample?			
	Are samples for metal analysis split into two portions?			
	Are samples for dissolved metals filtered through a 0.45 micron filter?			
	Are samples for total metals left unfiltered?			
	Is one equipment blank prepared each day of ground-water sampling?			
	Are sample labels used?			
	Do sample lables used provide the following information?			
	Sample identification number?			
	Name of collector?			
	Date & time of collection?			
	Place of collection?			
	Parameter(s) requested and preservatives used?			
	Do labels remain legible even if wet?			
	Are sample seals placed on those containers to ensure the samples are not altered?			
	Is a field logbook maintained?			
	Does field logbook document the following?			
	Purpose of sampling (e.g. detection or assessment)?			
	Location of well(s)?			
	Total depth of each well?			
	Static water level depth and measurement technique?			
	Presence of immiscible layers and detection method?			
	Collection method for immiscible layers and sample identification numbers?			
	Well evacuation procedures?			
	Sample withdrawal procedure?			
	Date & time of collection?			
	Well sampling sequence?			
	Types of sample containers and sample identification number(s)?			
	Preservative(s) used?			
	Parameters requested?			
	Field analysis data and method(s)?			

40 CFR Part	Description of Conditions to be met:	YES	NO	N
	Sample distribution and transporter?			
	Field observations?			
	Unusual well recharge rates?			
	Equipment malfunction(s)?			
	Possible sample contamination?			
	Sampling rate?			
§265.90(a)	Is a chain-of-custody record included with each sample?			
§265.92(a)	Does chain-of-custody record document the following?			
§265.93(d)(4)	Sample number?			
§270.14(c)(4)	Signature of collector?			
	Date & time of collection?			
	Sample type?			
	Station location?			
	Number of containers?			
	Parameters requested?			
	Signatures of persons involved in the chain-of-possession?			
	Does a sample analysis request sheet accompany each sample?			
	Does the request sheet document the following?			
	Name of the person receiving the sample?			
	Date of sample receipt?			
	Laboratory sample number (if different from the field number)?			
	Analyses to be performed?			
§265.90(a)	Is the validity and reliability of the laboratory and field generated data ensured by a QA/QC program?			
§265.92(a)	Does the QA/QC program include :			
§265.93(d)(4)	Documentation of any deviations from approved procedures?			
§270.14(c)(4)	Documentation of analytical results for:			
	Blanks?			
	Standards?			
	Duplicates?			
	Spiked samples?			
	Detectable limits for each parameter being analyzed?			
	Are approved statistical methods used?			
	Are QC samples used to correct data?			
	Are all data critically examined to ensure it has been properly calculated and reported?			
	Are the wells adequately maintained?			
	Are the monitoring wells protected and secure?			
	Do the wells have surveyed casing elevations?			
	Are the groundwater samples turbid?			
	Have all physical char. of the site been noted in the inspector's field notes (i.e. surface waters, topography, surface features)?			
	Does inspector's site sketch include scale, north arrow, locations of buildings, regulated units, and wells, and rough drainage?			
§270.14(c)(4)	Is facility operating under the correct monitoring program according to the statistical analyses performed by the current operator?			
	Does the GW monitoring system,(as des.& op.)allow for det. or ass. of any possible GW contamination caused by the facility?			
	Do sampling & analysis procedures permit o/o to detect/assess nature & extent of release of hazardous constituents to GW?			

Please print or type with ELITE type (12 characters per inch) in the unshaded areas only

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GSA No. 0246-EPA-OT

Please refer to Section V. Line-by-Line Instructions for Completing EPA Form 8700-12 before completing this form. The information requested here is required by law (Section 3010 of the *Resource Conservation and Recovery Act*).

Notification of Regulated Waste Activity

EPA United States Environmental Protection Agency

Date Received (For Official Use Only)

I. Installation's EPA ID Number *(Mark 'X' in the appropriate box)*

☐ A. Initial Notification ☐ B. Subsequent Notification *(Complete Item C)*

C. Installation's EPA ID Number

II. Name of Installation *(Include company and specific site name)*

III. Location of Installation *(Physical address not P.O. Box or Route Number)*

Street

Street *(Continued)*

City or Town | State | Zip Code

County Code | County Name

IV. Installation Mailing Address *(See Instructions)*

Street or P.O. Box

City or Town | State | Zip Code

V. Installation Contact *(Person to be contacted regarding waste activities at site)*

Name *(Last)* | *(First)*

Job Title | Phone Number *(Area Code and Number)*

VI. Installation Contact Address *(See instructions)*

A. Contact Address Location ☐ Mailing ☐ | B. Street or P.O. Box

City or Town | State | Zip Code

VII. Ownership *(See instructions)*

A. Name of Installation's Legal Owner

Street, P.O. Box, or Route Number

City or Town | State | Zip Code

Phone Number *(Area Code and Number)* | B. Land Type | C. Owner Type | D. Change of Owner Indicator ☐ Yes ☐ No | (Date Changed) Month Day Year

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ID - For Official Use Only

VIII. Type of Regulated Waste Activity *(Mark 'X' in the appropriate boxes. Refer to Instructions)*

A. Hazardous Waste Activity

1. Generator (See Instructions)
   - ☐ a. Greater than 1000kg/mo (2,200 lbs.)
   - ☐ b. 100 to 1000 kg/mo (220-2,200 lbs.)
   - ☐ c. Less than 100 kg/mo (220 lbs)
2. Transporter (Indicate Mode in boxes 1-5 below)
   - ☐ a. For own waste only
   - ☐ b. For commercial purposes

Mode of Transportation
- ☐ 1. Air
- ☐ 2. Rail
- ☐ 3. Highway
- ☐ 4. Water
- ☐ *5. Other - specify*

☐ 3. Treater, Storer, Disposer (at installation) Note: A permit is required for this activity, see instructions.

4. Hazardous Waste Fuel
   - ☐ a. Generator Marketing to Burner
   - ☐ b. Other Marketers
   - ☐ c. Boiler and/or Industrial Furnace
     - ☐ 1. Smelter Deferral
     - ☐ 2. Small Quantity Exemption

Indicate Type of Combustion Device(s)
- ☐ 1. Utility Boiler
- ☐ 2. Industrial Boiler
- ☐ 3. Industrial Furnace

☐ 5. Underground Injection Control

B. Used Oil Recycling Activities

1. Used Oil Recycling Marketer
   - ☐ a. Marketer Directs Shipment of Used Oil to Off-Specification Burner
   - ☐ b. Marketer Who First Claims the Used Oil Meets the Specifications
2. Used Oil Burner - Indicate Type(s) of Combustion Device
   - ☐ a. Utility Boiler
   - ☐ b. Industrial Boiler
   - ☐ c. Industrial Furnace
3. Used Oil Transporter - Indicate Type(s) of Combustion Device(s)
   - a. Transporter
   - b. Transfer Facility
4. Used Oil Processor/Re-refiner - Indicate Type(s) of Activity(ies)
   - ☐ a. Process
   - ☐ b. Re-refine

IX. Description of Regulated Wastes *(Use additional sheets if necessary)*

A. Characteristics of Nonlisted Hazardous Wastes. *(Mark 'X' in the boxes corresponding to the characteristics of nonlisted hazardous wastes your installation handles; See 40 CFR Parts 261.20 - 261.24)*

1. Ignitable *(D001)*	2. Corrosive *(D002)*	3. Reactive *(D003)*	4. Toxicity Characteristic	(List specific EPA hazardous waste number(s) for the Toxicity characteristic contaminant(s))
☐	☐	☐	☐	

B. Listed Hazardous Wastes. *(See 40 CFR 261.31 - 33; See instructions if you need to list more than 12 waste codes.)*

1	2	3	4	.5	6
7	8	9	10	11	12

C. Other Wastes. *(State or other wastes requiring a handler to have an I.D. number; See instructions.)*

1	2	3	4	5	6

X. Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature	Name and Official Title *(Type or print)*	Date Signed

XI. Comments

Note: Mail completed form to the appropriate EPA Regional or State Office. *(See Section III of the booklet for addresses.)*

Appendix G

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

GAST
G(

LAIDLEY ELI McCOY, Ph.D.
DIRECTOR

Add

RE: _____(Plant)
EPA ID No:

SUBJECT: Part B Application Completeness Review

Dear

The Division of Environmental Protection, Office of Waste Management (OWM), has concluded its completeness review of the Part B application submitted on ___, for (reissuance, issuance) of a RCRA operating permit for the hazardous waste management units located at the above referenced facility. The OWM has determined that the application is complete and in accordance with the requirements of 40 CFR §270, incorporated by reference into the hazardous Waste Management Rule, Title 47, Series 35.

The OWM is reviewing your application in accordance with existing State and Federal regulations. During the permit application review process, additional information may be requested from you to clarify, modify, or supplement the previously submitted material. The OWM has begun a technical review of the application.

If you have any questions, please feel free to contact me at the numbers provided at the bottom of this page.

Sincerely,

Permit Writer
Hazardous Waste Management Section
Office of Waste Management

:cm
cc: Robert Greaves, US EPA Region III
G. S. Atwal, OWM Permitting
Mike Dorsey, OWM Compliance
, OWM Inspector

PBP 8

Appendix H

GA

ON OF ENVIRONMENTAL PROTECTION
1356 Hansford Street
Charleston, WV 25301-1401
(Date)

LAIDLEY ELI McCOY, Ph.D.
DIRECTOR

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P

(Ad

RE: (facility)
EPA ID No: WVD

SUBJECT: Technical Review of Permit Application

Dear :

The Division of Environmental Protection, Office of Waste Management (OWM), has conducted a completeness and initial technical review of the permit application submitted on (Date), 199_ for permit (issuance/re-issuance). This phase of our review was conducted to evaluate the completeness and technical adequacy of the information submitted in accordance with the requirements of 40 CFR 270, as referenced by Section 11 of the Hazardous Waste Management Rule (HWMR).

The OWM has determined that the application is deficient. The enclosed Notice Of Deficiency (NOD) attachment specifies the revisions needed to make the application acceptable. (***Optional Statement(s):*** As you will note, I have also enclosed a portion of a guidance document to assist you.) Please submit four (4) copies of the revised material to the OWM within forty-five (45) days of receipt of this letter.

If you have any questions regarding the review of your application or desire a meeting with the OWM, please contact me at the numbers provided on this letter. All correspondence should reference the EPA Identification Number and be sent to my attention.

Sincerely,

(Permit Writer)
Hazardous Waste Management Section
Office of Waste Management

___:cm
Enclosures
cc: Robert Greaves, US EPA Region-III (NOD and cover letter only)
Sharon McCauley, US EPA Region III (cover letter only)
G. S. Atwal, OWM Permitting (cover letter only/via e-mail)
Mike Dorsey, OWM Compliance (cover letter only/via e-mail)
_____, OWM Inspector (NOD and attachments/via e-mail)

GASTON CAPI
GOVERNO

ENVIRONMENTAL PROTECTION
356 Hansford Street
rleston, WV 25301-1401

LAIDLEY ELI McCOY, Ph.D.
DIRECTOR

Appendix I

(Date)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P

Address:

RE: (facility)
EPA ID No: WVD

SUBJECT: Part B Call-in

Dear:

The Chief of the Office of Waste Management (OWM), West Virginia Division of Environmental Protection, pursuant to 40 CFR §270.1(b), incorporated by reference into Section 12 of the Hazardous Waste Management Rule, is hereby formally requesting that (facility), submit a permit application to the Chief, OWM, within six (6) months of receipt of this letter.

In accordance with §22-18-8(b) of the West Virginia Code, OWM has provided the Part B application format, instructions and checklist on a 3½" floppy disk in Work Perfect 5.1 format.

If you have any questions, or if you wish to schedule a pre-application conference, please contact Mr.(permit writer), of my staff, at the address or phone numbers provided on this letter. All correspondence should reference the facility's EPA ID Number and matters concerning permitting should be directly addressed to Mr.(permit writer)'s attention.

Sincerely,

B. F. Smith, P.E.
Chief
Office of Waste Management

BFS:__w
Enclosure
cc: Robert Greaves, US EPA Region III, cover letter only
Sharon McCauley, US EPA Region III, cover letter only
G. S. Atwal, OWM Permitting, cover letter only (via e-mail)
Barbara Taylor, Chief, OWR, Cover letter only (via e-mail)
Dale Farley, Chief OAQ, cover letter only (via e-mail)
Mike Dorsey, OWM Compliance, cover letter only (via e-mail)
Lucy Pontiveros, OAQ, cover letter only (via e-mail)
(Inspector), OWM Inspector, cover letter only (via e-mail)
(Permit writer), OWM Permitting, cover letter only (via e-mail)