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

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

§45-25-1. General.

1.1. Scope.

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

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

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

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

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

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

1.3. Filing Date. -- March 22, 2018.

1.4. Effective Date. -- June 1, 2018.

1.5. Incorporation by reference.

1.5.a. Federal counterpart regulation. -- The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited

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exception, this rule incorporates by reference the provisions contained in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270, and 279 as listed in Table 45-25 below, effective June 1, 2017.

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

§45-25-2. Definitions.

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

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

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

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

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

2.6. “CFR” means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

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

2.8. “Facility mailing list” means the mailing list for a facility maintained by U.S. EPA in accordance with 40 CFR § 124.10(c)(1)(ix).

2.9. “Hazardous waste” means a hazardous waste as defined in 40 CFR § 261.3.

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

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

2.12. “RCRA” means the federal Solid Waste Disposal Act as amended by the Resource

Conservation and Recovery Act, as amended; 42 U.S.C. § 6901, et seq.

2.13. “RCRA Permit” means “West Virginia hazardous waste permit”. The following additional requirements shall apply to obtain a hazardous waste management permit in West Virginia. All references in 40 CFR Part 270 to 40 CFR Part 124 shall be deemed to be references to the applicable provisions of subsections 5.1 through 5.14. of this rule. To the extent of any inconsistency with 40 CFR Part 270, the specific provisions contained herein shall govern.

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

2.15. “U.S. EPA” means the United States Environmental Protection Agency.

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

§45-25-3. Adoption of standards.

3.1. The Secretary hereby adopts and incorporates by reference the definitions, lists, tables, appendices, conditions, and requirements from 33CSR20, “Hazardous Waste Management System”, effective June 1, 2017, except for any provisions in 33CSR20 which incorporate by reference the Code of Federal Regulations. In case of a conflict between the Division of Air Quality and the Division of Water and Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Secretary has final administrative authority to resolve the conflict.

3.2. Unless otherwise indicated, the Secretary hereby adopts and incorporates by reference the provisions contained in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270, and 279 as listed in Table 45-25, effective June 1, 2017, with the following modifications:

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

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

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

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

§45-25-4. Requirements.

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

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

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rules promulgated thereunder;

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

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

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

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

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

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

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

4.4. Owners and operators of hazardous waste management facilities that treat, store or dispose of ignitable or reactive wastes or mix incompatible waste or incompatible wastes and other materials shall comply with the general requirements for ignitable, reactive or incompatible wastes set forth in 40 CFR § 264.17.

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

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

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

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

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

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

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

effects on air quality considering:

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

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

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

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

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

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

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

4.12.a. Process turn-arounds;

4.12.b. Cleaning of process equipment;

4.12.c. Planned process shutdowns; and

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

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

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

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

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

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

4.13.b.1. Meteorological data, and

4.13.b.2. Description of the air dispersion models, and

4.13.b.3. Assumptions underlying the air dispersion models used; and

4.13.c. Expected human and environmental exposure, including:

4.13.c.1. Topographic considerations,

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

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

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

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

§45-25-5. Permit Process.

5.1. Pre-application public meeting and notice.

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

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

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

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

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

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

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

5.1.d.1.C. A broadcast media announcement. -- The applicant shall broadcast a notice, fulfilling the requirements in paragraph 5.1.d.2, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Secretary; and

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

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

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

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

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

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

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

5.2. Public notice requirements at the application stage.

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

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

5.2.b.1. The applicant;

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

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

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

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

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

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

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

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

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

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

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

5.3. Information repository.

5.3.a. Applicability. -- The following requirements apply to all applicants seeking West Virginia hazardous waste management permits for hazardous waste management units.

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

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

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

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

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

5.4. Application for a permit.

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

5.4.b. The Secretary shall review every application for completeness. Each application submitted by a new hazardous waste management facility shall be reviewed for completeness by the Secretary within 30 days of its receipt. Each application submitted by an existing hazardous waste management facility (both Part A and Part B of the application) shall be reviewed for completeness within 60 days of receipt. Upon completing the review, the Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Secretary shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Secretary shall specify in the notice of deficiency a date for

submitting the necessary information. The Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Secretary may request additional information from the applicant, but only when necessary to clarify, modify or supplement previously submitted materials. The request for additional information will not render an application incomplete.

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

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

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

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

5.4.f.1. Prepare a draft permit;

5.4.f.2. Give public notice;

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

5.4.f.4. Issue a final permit.

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

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

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

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

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

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5.5.b.3. “Classes 1 and 2 modifications” as defined in 40 CFR §§ 270.42(a) and (b) are not subject to the requirements of this subsection.

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

5.6. Draft permits.

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

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

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

5.6.c.1. All conditions under 40 CFR §§ 270.30 and 270.32;

5.6.c.2. All compliance schedules under 40 CFR § 270.33;

5.6.c.3. All monitoring requirements under 40 CFR § 270.31; and

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

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

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

5.7. Fact Sheet.

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

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

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

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

5.7.b.3. A brief summary of the basis for the draft permit conditions, including references to

applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.8.d.1.A. The applicant;

5.8.d.1.B. Any other agency that the Secretary knows has issue or is required to issue a RCRA permit, an underground injection control (UIC) permit, a prevention of significant deterioration (PSD) permit or other permit under the Clean Air Act and W.Va. Code § 22-5-1 et seq., a National Pollutant Discharge Elimination System (NPDES) permit, or a sludge management permit for the same facility or activity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.9. Public comments and requests for public hearing. -- During the public comment period provided under subsection 5.8, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and state the nature of the issues proposed to be raised in the hearing. The Secretary shall consider all comments in making the final decision and shall respond to the comments as provided in subsection 5.13.

5.10. Public hearings.

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

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

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

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

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

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

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

5.11. Reopening of the public comment period.

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

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

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

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

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

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

5.12. Issuance and effective date of permit.

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

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

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

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

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

5.13. Response to comments.

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

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

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

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

5.14. Administrative record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.14.b.8. The final permit.

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

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

5.15. Public access to information.

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

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

5.16. The provisions of 40 CFR § 270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W. Va. Code §§ 22-18-1, et seq. 22-5-1, et seq., and 29B-1-1, et seq.

§45-25-6. Exclusions and exemptions.

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

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

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

§45-25-7. Application fee.

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

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

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

§45-25-8. Inconsistency between rules.

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

TABLE 45-25

Item no.	CFR no.	Part no.	Subpart no.	Title
1	40 CFR	264, 265	O	Incinerator
2	40 CFR	270.19	B	Specific requirements for incinerators
		270.42	D	Permit modification at the request of the permittee
			Appendix	Appendix I
3	40 CFR	270.62	F	Hazardous waste incinerator permits
4	40 CFR	270.72	G	Changes during interim status
5	40 CFR	264	X	Miscellaneous units
6	40 CFR	270.23	B	Specific requirements for miscellaneous units
7	40 CFR	264, 265	AA	Air emission standards for process vents
8	40 CFR	270.24	B	Specific requirements for process vents
9	40 CFR	264, 265	BB	Air emission standards for equipment leaks
10	40 CFR	270.25	B	Specific requirements for equipment leaks
11	40 CFR	264, 265	CC	Air emission standards for tanks, surface impoundments, and containers
		264.179, 265.178	I	
		264.200, 265.202	J	
		264.232, 265.231	K	
		265	Appendix	
12	40 CFR	270.14(b)	B	General information requirements
13	40 CFR	270.27	B	Specific requirements for air emissions control for tanks, surface impoundments and containers
14	40 CFR	265	P	Thermal treatment
15	40 CFR	266	H	Hazardous waste burned in boilers and industrial furnaces
			Appendices	Appendix I to XIII
16	40 CFR	270.22	B	Specific requirements for boilers and industrial furnaces burning hazardous wastes
17	40 CFR	270.66	F	Permits for boiler and industrial furnaces burning hazardous waste
18	40 CFR	279.23	C	On-site burning in space heater
19	40 CFR	279	G	Standards for used oil burners who burn off-specification used oil for emergency recovery
20	40 CFR	261.6	A	Requirements for recyclable materials
		261.4	A	Exclusions
21	40 CFR	261.7	A	Residues of hazardous waste to empty containers

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22	40 CFR	261.38	E	Comparable/Syngas fuel exclusions/exemptions
23	40 CFR	262.34	C	Accumulation time
24	40 CFR	260.11	B	References
25	40 CFR	264.15	B	General inspection requirement
26	40 CFR	264.73	E	Operating records
27	40 CFR	270.235	I	Options for incinerators and cement and lightweight aggregate kilns to minimize emissions from startup, shutdown, and malfunction events
28	40 CFR	264.17	B	General requirements for ignitable, reactive, or incompatible wastes