

\$17.80



Executive Office  
#10 McJunkin Road  
Nitro, WV 25143-2506  
Telephone: (304) 759-0515  
Fax: (304) 759-0526

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## West Virginia Bureau of Environment

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Cecil H. Underwood  
Governor

Michael P. Miano  
Commissioner

July 29, 1999

Ms. Judy Cooper  
Director, Administrative  
Law Division  
Secretary of State's Office  
Capitol Complex  
Charleston, WV 25305

RE: 45CSR2 - "To Prevent and Control Particulate Air Pollution From Combustion of Fuels in Indirect Heat Exchangers"

Dear Ms. Cooper:

This letter is to give my approval for filing of the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of an Agency-Approved Rule."

Your cooperation in this matter is very much appreciated. If you should have questions or need additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely yours,

A handwritten signature in black ink that reads "Michael P. Miano".

Michael P. Miano  
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp  
Karen Watson  
Carrie Chambers

## Questionnaire

DATE: August 6, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection  
Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311-2599  
Phone: 304-558-4022

LEGISLATIVE RULE TITLE: 45CSR2 "To Prevent and Control Particulate Air Pollution from  
Combustion of Fuel in Indirect Heat Exchangers"

1. Authorizing statute (s) citation: W. Va. Code §§ 22-5-1 et seq.  
\_\_\_\_\_
2.
  - a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 16, 1999 and July 14, 1999
  - b. What other notice, including advertising, did you give of the hearing?
    - I. Class I legal advertisement. *Charleston Daily Mail* and *Charleston Gazette*
    - II. Sent a copy of the Public Notice to our agency mailing list.
    - III. DEP's "*Public Notice Bulletin*" (June and July issues)
    - IV. Public Notices placed on agency's Web site:  
<http://www.dep.state.wv.us/oaq/>
    - V. Press Release
  - c. Date of Public Hearing (s) or Public Comment Period ended:  
Public Hearing -- July 19, 1999  
Public Comment Period ended -- July 28, 1999

- Attached   X   No comments received

- August 6, 1999

- Edward L. Kropp, Chief  
1558 Washington Street, East  
Charleston, WV 25311-2599  
Phone: 304-558-4022  
Fax: 304-558-3287  
E-Mail: [skropp@mail.dep.state.wv.us](mailto:skropp@mail.dep.state.wv.us)

- See "F" above

- 2

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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- b. Date of hearing or comment period:

N/A

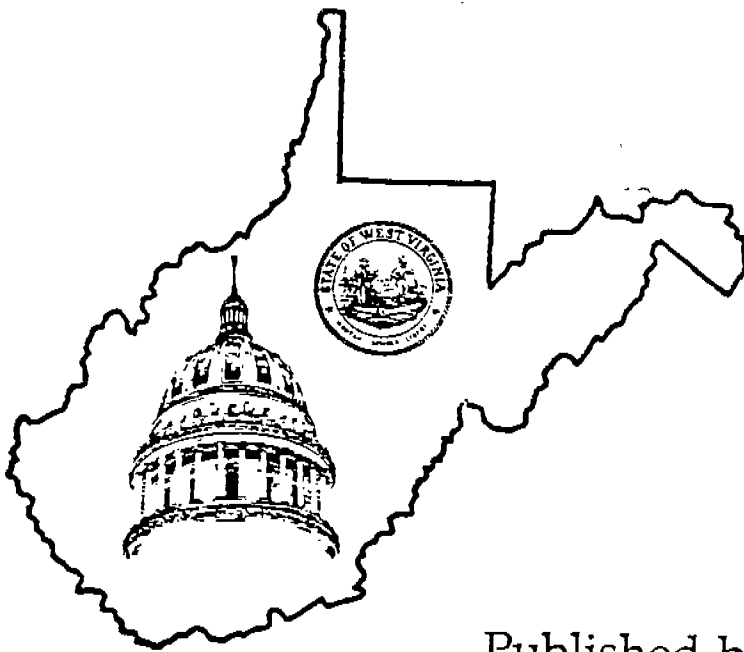
- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

- d. Attach findings and determinations and reasons:

Attached N/A

# WEST VIRGINIA REGISTER



Published by Ken Hechler, Secretary of State

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*July 16, 1999*

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*Judy Cooper  
Director*

*Lisa Blake  
Leah Powell  
Administrative Assistants*

*Secretary of State  
Administrative Law Division  
Bldg. 1, Suite 157K  
1900 Kanawha Blvd. E.  
Charleston, WV 25305-0770*

*(304)558-6000  
www.secretary.state.wv.us/sos*

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**CHRONOLOGICAL INDEX, VOLUME XVI ISSUE 28**

**PROPOSED RULES FILED FOR PUBLIC HEARING**

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Air Quality (45-2)	To Prevent & Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Extension of Written Comments Only: Edward L. Kropp, Chief Ofc of Air Quality 1558 Washington St E Charleston WV 25311-2599
Air Quality (45-3)	To Prevent & Control Air Pollution from the Operation of Hot Mix Asphalt Plants Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above

## RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC- ACTION	LEGIS	FINAL FILE	EFFECTIVE
Administration (148-7)	State Purchasing Card Program \$3.60 Legislative	7/2/1998	8/3/1998		8/3/1998	Modified & Approved 10/19/1998 Filed 10/29/1998	SB 272	5/18/1999	5/18/1999
Agriculture (61-1)	Animal Disease Control** \$8.40 Legislative	5/14/1998	6/15/1998	5/14/1998 Effective 6/25/1998	6/18/1998	Modified & Approved 7/14/1998 Filed 7/16/1998	SB 269	4/13/1999	4/13/1999
Agriculture (61-7A)	Marketing of Eggs Regulations \$3.20 Legislative	5/10/1999	6/11/1999		6/30/1999				
Air Quality (45-2)	To Prevent & Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers \$10.00 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-3)	To Prevent & Control Air Pollution from the Operation of Hot Mix Asphalt Plants \$5.80 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants into the Open Air which Causes or Contributes to an Objectionable Odor or Odors \$5.40 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas \$7.20 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse \$5.80 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations \$8.00 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						



## LEGISLATIVE

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #2

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FORM #2

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NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--  
NOTICE OF EXTENSION OF COMMENT PERIODAGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45RULE TYPE: Legislative ; CITE AUTHORITY W. Va. Code §822-5-1 et seq.AMENDMENT TO AN EXISTING RULE: YES X NO     IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2TITLE OF RULE BEING AMENDED: "To Prevent and Control Pointsource Air Pollutionfrom Combustion of Fuel in Industrial Heat Exchangers"IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:     TITLE OF RULE BEING PROPOSED:     NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--  
NOTICE OF EXTENSION OF COMMENT PERIODAGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45RULE TYPE: Legislative ; CITE AUTHORITY W. Va. Code §822-5-1 et seq.AMENDMENT TO AN EXISTING RULE: YES X NO     IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from theOperation of Hot Mix Asphalt Plants"IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:     TITLE OF RULE BEING PROPOSED:     

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 28, 1999 AT 5:00 PM

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Edward L. Kropp, Chief

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

THE ISSUES TO BE HEARD SHALL BE:  
LIMITED TO THIS PROPOSED RULE.

*Edward L. Kropp/Kenneth B. Watson*

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 28, 1999 AT 5:00 PM

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Edward L. Kropp, Chief

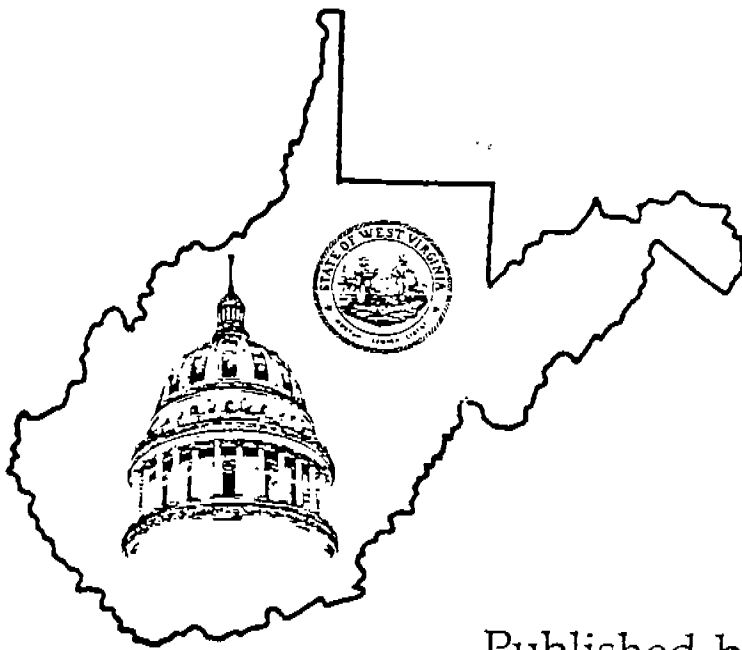
Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

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LIMITED TO THIS PROPOSED RULE.

*Edward L. Kropp/Kenneth B. Watson*



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Published by Ken Hechler, Secretary of State

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Bldg. 1, Suite 157K  
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PROPOSED RULES FILED FOR PUBLIC HEARING

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Air Quality (45-2)	To Prevent & Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Office of Air Quality - Conference Rm 1558 Washington Street East Charleston, WV 25311 Written Comments to: Edward L Kropp, Chief Office of Air Quality 1558 Washington Street East Charleston, WV 25311
Air Quality (45-3)	To Prevent & Control Air Pollution from the Operation of Hot Mix Asphalt Plants Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above

## RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Acupuncture (32-12)	Tutorial Education Requirements \$3.40 Legislative	7/1/98	7/31/98		8/3/98	Modified & Approved 11/12/98 Filed 12/16/98, 1/8/99	SB 269	5/21/99	5/21/99
Acupuncture (32-13)	Formation & Approval of Professional Ltd Liability Companies \$2.60 Legislative	7/1/98	7/31/98		8/3/98	Modified & Approved 11/12/98 Filed 12/16/98, 1/8/99	SB 269	5/21/99	5/21/99
Administration (148-7)	State Purchasing Card Program \$3.60 Legislative	7/2/98	8/3/98		8/3/98	Modified & Approved 10/19/98 Filed 10/29/98	SB 272	5/18/99	5/18/99
Agriculture (61-1)	Animal Disease Control** \$8.40 Legislative	5/14/98	6/15/98	5/14/98 Effective 6/25/98	6/18/98	Modified & Approved 7/14/98 Filed 7/16/98	SB 269	4/13/99	4/13/99
Agriculture (61-7A)	Marketing of Eggs Regulations \$3.20 Legislative	5/10/99	6/11/99						
Agriculture (61-7A)	Marketing of Eggs Regulations \$3.20 Legislative	6/11/98	7/13/98	9/30/98 ERD 15-98 App 11/10/98	7/14/98	Modified & Approved 9/23/98 Filed 9/30/98	SB 269	4/26/99	7/1/99
Agriculture (61-9)	WV Seed Law \$4.20 Legislative	6/11/98	7/13/98	9/30/98 ERD 17-98 Disapproved 11/10/98	7/14/98	Modified & Approved 9/23/98 Filed 9/30/98	SB 269	4/26/99	7/1/99
Air Quality (45-2)	To Prevent & Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers \$10.00 Legislative	6/16/99	7/19/99						
Air Quality (45-3)	To Prevent & Control Air Pollution from the Operation of Hot Mix Asphalt Plants \$5.80 Legislative	6/16/99	7/19/99						

## LEGISLATIVE

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

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JUL 19 1999

## NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER 45

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED 2

TITLE OF RULE BEING AMENDED "To Prevent and Control Particulate Air Pollution

from Combustion of Fuel in Indirect Heat Exchangers"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED

TITLE OF RULE BEING PROPOSED

DATE OF PUBLIC HEARING July 19, 1999 TIME 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality - Conference Room

1558 Washington Street East

Charleston, WV 25311

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☒

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Mr. Edward L. Kropp, Chief

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311

K. Kropp

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

Do Not Mark In This Box

## NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER 45

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED 3

TITLE OF RULE BEING AMENDED "To Prevent and Control Air Pollution from the

Operation of Hot Mix Asphalt Plants"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED

TITLE OF RULE BEING PROPOSED

DATE OF PUBLIC HEARING July 19, 1999 TIME 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality - Conference Room

1558 Washington Street East

Charleston, WV 25311

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☒

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Mr. Edward L. Kropp, Chief

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments

The issues to be heard shall be limited to the proposed rule

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

OTHER

NOTICE OF PUBLIC HEARING AND  
PUBLIC COMMENT PERIOD

July 3 - 11 '93

On Monday, July 19, 1999 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on proposed revisions to the following legislative rules:

45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Disposal Areas"

45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"

45CSR3 "To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants"

45CSR4 "To Prevent and Control the Discharge of Air Pollutants into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"

45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"

45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse"

45CSR7 "To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations"

45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides"

45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide"

45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

45CSR17 "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"

45CSR18 "To Prevent and Control Particulate Air Pollution from Direct Meat-Filing Devices"

Legal Notice  
Page 2

45CSR23 "To Prevent and Control Emissions from Municipal Solid Waste Landfills"

45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR33 "Acid Rain Provisions and Permits"

45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.

Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.

Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan for the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval by the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan for the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34, the Office of Air Quality will seek federal delegation of authority from the U. S. Environmental Protection Agency to implement and enforce the revised standards.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U. S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR23, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.

Upon authorization and promulgation of revisions to 45CSR33, the Office of Air Quality will submit this rule to the U. S. Environmental Protection Agency as part of the State's Acid Program.

The hearing will be held in the Office of Air Quality's Conference Room located at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral comments by the public will be accepted until the close of the hearing on July 19th and will be made a part of the rulemaking record. Comments will not be accepted by e-mail. The public may also submit written comments by mail or other delivery to the Office of Air Quality through July 19th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief  
Office of Air Quality  
1558 Washington Street East  
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 18, 1999 at the Office of Air Quality's Charleston office.

**NOTICE OF PUBLIC HEARING**

On Thursday, July 22, 1999 beginning at 7:00 p.m., the Office of Air Quality of the West Virginia Division of Environmental Protection (WVDEP) will hold a public hearing on proposed revisions to the State Implementation Plan (SIP) to attain and maintain compliance with the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO<sub>2</sub>). The proposed plan revisions affect American Electric Power's Kanawha Plant, Columbian Chemical Company, PPG Industries Inc. and Bayer Corporation, all of which are located in Marshall County, West Virginia.

The WVDEP proposes to enter Consent Orders with the aforementioned companies or, if necessary, seek modification to rule 45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides" to establish new sulfur dioxide emission limits or other requirements necessary to assure attainment of the sulfur dioxide NAAQS in Marshall County.

Upon entry of the proposed Consent Orders and/or promulgation of a revised 45CSR10, these documents, in conjunction with supporting documentation and analysis will be submitted to the United States Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act as amended.

The hearing will be held at the Grave Creek Mound Historical Site located at 801 Jefferson Avenue, Moundsville, WV 26041. Written and oral testimony by all interested parties will be accepted and made part of the record, which will be closed at the conclusion of the public hearing. Submission of comments by electronic mail will not be accepted.

Persons interested in submitting written comments prior to the hearing should send them to:

Tim J. Carroll, Assistant Chief  
Office of Air Quality  
Northern Panhandle Regional Office  
1911 Warwood Avenue  
Wheeling, WV 26003

Copies of the draft Consent Orders and supporting documentation will be available for public review at the following locations on and after June 21, 1999:

Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311

OTHER

## NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

The West Virginia Division of Environmental Protection, Office of Air Quality, hereby provides notice of the extension of the public comment period previously established for proposed revisions to the following legislative rules:

45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Disposal Areas"

45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"

45CSR3 "To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants"

45CSR4 "To Prevent and Control the Discharge of Air Pollutants into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"

45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"

45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse"

45CSR7 "To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations"

45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides"

45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide"

45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

45CSR17 "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"

45CSR18 "To Prevent and Control Particulate Air Pollution from Direct Meat-Firing Devices"

45CSR21 "To Prevent and Control Emissions from Municipal Solid Waste Landfills"

45CSR25

"To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR33

"Acid Rain Provisions and Permits"

45CSR34

"Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.

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Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34, the Office of Air Quality will seek Federal delegation of authority from the U.S. Environmental Protection Agency to implement and enforce the revised standards.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR21, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.

Upon authorization and promulgation of revisions to 45CSR33, the rule will be submitted to the Environmental Protection Agency as part of the State's Acid Rain Program.



OTHER

The public comment period, previously set to expire at the close of the public hearing on July 19, 1999, will be extended up to and including July 28, 1999, at 5:00 p.m. to permit the receipt of written comments, which will be made a part of the rulemaking record. The public hearing set for July 19, 1999, at 6:00 p.m. will be held as previously noticed. Comments will not be accepted by e-mail. The public may submit written comments by mail or other delivery to the Office of Air Quality through July 28th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief  
Office of Air Quality  
1558 Washington Street East  
Charleston, WV 25311-2599

Copies of the proposed legislative rules are available for public review at the Office of Air Quality's Charleston office at the above address.

**BRIAN**

Stuart Rosen  
Senior Attorney

July 13, 1999

**BY OVERNIGHT MAIL**

Mr. Bill Harrington  
Office of the Secretary of State  
State Capitol Building  
157K  
Charleston, West Virginia 25305

Re: West Virginia Statutes, Section 47-2A 3(b)

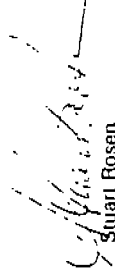
Dear Mr. Harrington:

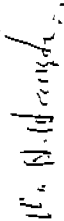
Pursuant to the provisions of the above statute, enclosed is a booklet containing BMI's music licensing agreements and related documents, along with a certification from our corporate secretary, which constitutes our current filing of such materials under the Act. This complete set of agreements should be substituted for the agreements filed last year.

I understand that there is no fee for filing these materials.

If you have any questions or comments about the enclosures, please feel free to contact me. In addition, I would appreciate your acknowledging receipt of this letter by signing and returning an extra copy in the enclosed envelope.

Very truly yours,

  
Stuart Rosen

RECEIVED: 

**BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

**RULE TITLE:**      45CSR2 - "To Prevent and Control Particulate Air Pollution From  
Combustion of Fuel in Indirect Heat Exchangers"

**A.      AUTHORITY:** W.Va. Code §§22-5-1 et seq.

**B.      SUMMARY OF RULE:**

45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel In Indirect Heat Exchangers" sets standards for particulate matter weight and visible emissions from fuel burning indirect heat exchangers. The rule also establishes monitoring, record keeping and reporting requirements for the owner/operators of fuel burning indirect heat exchangers.

The revisions to 45CSR2 contained herein are intended to: Update definitions; clarify and streamline the opacity standards for visible emissions for the soot blowing exemption; streamline the monitoring, record keeping, and reporting requirements (MRRR); and eliminate unnecessary MRRR. Other revisions are intended to harmonize this rule with other rules of the Office of Air Quality rules for fuel burning units.

**C.      STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

The purpose of 45CSR2 is to establish particulate matter weight and visible emission standards for fuel burning units operated in West Virginia. 45CSR2 is part of the West Virginia State Implementation Plan (SIP) approved by the USEPA to assure attainment and maintenance of attainment with the National Ambient Air Quality Standards for particulate matter. The revisions proposed herein were initiated by the Office of Air Quality as part of a broad effort to modernize and streamline all the Office rules. The current revision process is also intended to update and harmonize this rule with other rules of the Office of Air Quality. The proposed revisions are the result of a thorough review in a stakeholder process that was inclusive of the Office of Air Quality, representatives of the regulated community, concerned citizens and the environmental community.

**D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:**

There is no federal counterpart regulation; therefore, a determination of stringency is not required.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with §22-1A-1 and 3(c,) the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

At their June 10, 1999 meeting, the Environmental Advisory Council reviewed and discussed this rule - there were no substantive changes as a result of their discussion. (See attached minutes of that meeting.)

## MINUTES

### ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

June 10, 1999, Director's Conference Room, Nitro

The sixteenth meeting of the DEP Advisory Council was held Thursday, June 10, 1999, in the Director's Conference Room located in Nitro. Chairman Mike Miano called the meeting to order at 10:00 a.m.

#### ATTENDING:

##### Advisory Council Members:

Mike Miano, Chairman  
Jacqueline Hallinan  
William Raney  
Rick Roberts  
William Samples

##### Environmental Protection:

Bill Adams	Pam Nixon
Andy Gallagher	Rocky Parsons
Tony Grbac	Cap Smith
Randy Huffman	Charlie Sturey
Mike Johnson	Barbara Taylor
Mike Lewis	Karen Watson
Robert Keatley	Mike Zeto

1) Review and Approval of March 22, 1999 Minutes. Chairman Miano called the meeting to order at 10:00 a.m. The first item on the agenda was approval of the minutes of the March 22 Advisory Council; they were approved as written.

2) Discussion of Proposed Rule Amendments - 2000 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's new rule-making procedure that was implemented by Director Miano in September 1998 to involve the Advisory Council in DEP's rule-making process as early as possible to enable the Council to review, comment, and make recommendations to the Director on DEP's proposed legislative rule changes before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

Chairman Miano said he would like to begin by saying he hoped all Council members had received their draft rules by E-mail without any complications and they were able to review them before the meeting. He informed the Council that due to the large number of rules being proposed for the 2000 Legislative Session, DEP's program offices would review them with the

Council as thoroughly as possible, in the allotted time frame, and try to answer any questions or concerns the Council may have.

The following Office of Air Quality's proposed rule amendments were discussed by Karen Watson, OAQ, with assistance from Richard Keatley, also from the OAQ office:

- 45CSR1 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COAL REFUSE DISPOSAL AREAS"
- 45CSR2 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM COMBUSTION OF FUEL IN INDIRECT HEAT EXCHANGERS"
- 45CSR3 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF HOT MIX ASPHALT PLANTS"
- 45CSR4 - "TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS"
- 45CSR5 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS"
- 45CSR6 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE"
- 45CSR7 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MANUFACTURING PROCESSES AND ASSOCIATED OPERATIONS"
- 45CSR10 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE EMISSION OF SULFUR OXIDES"
- 45CSR12 - "AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE"
- 45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"
- 45CSR17 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER"
- 45CSR18 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM DIRECT MEAT-FIRING DEVICES"
- 45CSR23 - "TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS"
- 45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES"
- 45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"
- 45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"

Karen began by bringing the Council up to date on the status of two OAQ rules that were filed during the last session (or late in the session). 45CSR8 revised the ambient air quality for sulfur oxides and particulate matter, and 45CSR9 pertained to ambient air quality standards for carbon monoxide and ozone. The DC Circuit Court of Appeals has ordered EPA to show how they arrived at the new standards - EPA may go back to the previous standards. Karen also apprised the Council on the  $N_{ox}$  State Implementation Plan. The Circuit Court stayed the implementation of that rule and there are no plans to develop any other amendments in the

immediate future. 45CSR28, which is the emissions trading rule that was filed late in the 1999 Session, was not taken up by the Legislature, but plans are to put the rule on the July agenda of the Interim Legislative Committee.

Karen explained the reason for the unusually large number of DEP rules that are being filed for the next Legislative Session. She informed the Council that several of the rules were outdated and were amended for consistency and streamlining, and are a result of months of on-going meetings with stakeholders -- involving both the regulated community and citizens. A particulate matter and sulfur oxide work group was also involved. Those rule amendments as a result of the stakeholders process include: 45CSR1 (which is being repealed and replaced with language in 45CSR5), 45CSR2, 3, 4, 5, 6, 7, 10, 12, 17, and 18 (which is being repealed since the rule is no longer deemed necessary). The amendments to the remainder of the rules, 45CSR16, 23, 25, 33, and 34 were necessary to adopt by reference definitions, clarifications, technical amendments, etc., recently adopted by US EPA.

After several minutes of discussion, the Advisory Council recommended to the Director that the following amendments be made to the OAQ rules:

*Mr. Samples pointed out that 45CSR2 and 45CSR7 contain different definitions for the term "opacity." The agency responded that this discrepancy was inadvertent and the language should be as it is in 45CSR2. The agency agreed to revise 45CSR7, subsection 2.23, accordingly.*

*Mr. Larry Harris was unable to attend the meeting; however, he expressed the following comments on 45CSR10 and 45CSR33 by e-mail. He stated that the State's rules should be more stringent than the federal counterpart regulations, since the State's streams are being adversely impacted. The agency responded that, at this point in time, it does not possess sufficient evidence to make the written finding that is required by WV Code §22-2-3a before promulgating a rule which is more stringent than a counterpart federal regulation.*

Cap Smith and Mike Zeto discussed the following Office of Waste Management proposed rule amendments:

- 33CSR2 - "Sewage Sludge Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"

Mike Zeto briefed the Council on the proposed amendments to 33CSR2. He stated that in 1996 the Legislature mandated DEP to perform a study on soil limitations for sewage sludge land application sites. These amendments (as a result of the study) were to be proposed by June 30, 1999. Other amendments to the rule include specifying the analytical method used for soil analysis, placing conditions on variances from the soil limits for land application sites, providing an incentive for municipalities to produce higher quality compost products, and adjusting the sewage sludge limits for four metals. Mr. Zeto told the Council these amendments are being proposed to update other related areas of the rule in an attempt to provide better management of sewage sludge within the state.

Cap Smith discussed 33CSR20 with the Council. He informed the Council that amendments are proposed in section 2 of the rule that will allow the Office of Waste Management to delist hazardous wastes, which has previously been handled by EPA. The other significant amendments that are being proposed by adoption of the Federal Register pertain to revision standards for owners and operators of closed and closing hazardous waste management facilities, post closure permit requirements, and the closure process. These amendments are referenced throughout the rule and will hopefully expedite site cleanup while maintaining environmental protection.

*There were several minutes of discussion on OWM's proposed rule amendments; however, no recommendations were made to the Director concerning the amendments.*

Mike Lewis, Office of Oil and Gas, discussed the following new proposed rule:

- 35CSR7 - "Well Operations - Within and Around Gas Storage Reservoirs"

Mike informed the Council that 35CSR7 is a proposed "new" rule for the O&G Office. The rule is needed to provide protection of the environment, the public, and the state's natural gas resources. It is the intent of the proposed rule to accomplish this by addressing certain operating procedures that oil and gas and gas storage operators are to use when drilling into or through a gas storage reservoir or the gas storage reservoir protective area. In order to assure absence of leaking gas, the proposed rule requires gas storage operators to conduct monitoring and inspections of gas storage wells.

*There were no questions or discussion by the Council on this proposed rule.*

The following proposed rules were discussed by the Office of Mining and Reclamation:

- 38CSR2 - "Surface Mining and Reclamation Rule"
- 38CSR2A - "Rules for Mining and Restoration for Sandstone, Limestone, and Sand"
- 38CSR2B - "RULES FOR MINING AND RECLAMATION OF MINERALS OTHER THAN COAL"

Ed Griffith, Office of Surface Mining, discussed the proposed amendments to the Surface Mining and Reclamation Rule. Ed told the Council that there are only minor amendments being proposed to this year's rule. The proposed definition of "woodlands" in subsection 2.136 relates to the utilization of commercial woodlands in Approximate Original Contour variance areas. This change is being proposed in order for the state to meet the federal policy that is expected to change in July 1999. The proposed amendment to change the bonding requirements of mining operations that request variances from contemporaneous reclamation to the maximum amount per acre bond (\$5,000 per acre) is found in subdivision 14.15.f. All other amendments are being proposed in order to meet the requirements of the Office of Surface Mining's program amendments.

Rocky Parsons, OMR's Philippi Office, next addressed OMR's proposed rules 38CSR2A and 2B. Rocky explained to the Council members that 38CSR2B has been in place since 1983 and regulates all minerals other than coal. However, in accordance with the requirement that separate rules for limestone, sandstone, and sand are to be promulgated, DEP is proposing

38CSR2A which will regulate only those minerals - 38CSR2B will regulate all minerals other than limestone, sandstone, sand, and coal. Both proposed rules will regulate roads, blasting, drainage control, methods of operation, excess spoil disposal, revegetation, mapping, transfer of permits, permit renewals, revisions and incidental boundary revisions. 38CSR2A will provide provisions for restoration and 38CSR2B will include provisions for reclamation. Rocky gave the Council a brief history on the roadblocks the agency has encountered in the past several years in their attempt to amend the quarry statute. He said since the agency has been unsuccessful in that approach, it has become necessary to try to accomplish this through rule making. He informed the Council of a public meeting held the previous week to discuss the two proposed rules. He said the meeting was well attended and he believes the rules were well received by everyone in attendance.

*The three OMR proposed rules were discussed by the Council members. Bill Raney said that although Rocky stated that the quarry rules have been well received by industry and the citizens, he is concerned about whether there has been enough time for the review of the proposed rules after they were drafted. He believes there would be a smoother transition into the rule making process, i.e., the public hearing/comment period, etc., if there had been more involvement from outside DEP during the drafting of the rules.*

*Mr. Larry Harris commented by e-mail 38CSR2A and 2B. His question is whether the siltation measures include silt fences where runoff might enter streams. He said it is not apparent what best management practices are for this situation, and he wonders if it needs to be spelled out. He knows of some operations in quarries where streams muddy after rainfalls, such as the Elkins and Waco quarries near Snowshoe, and he feels this is harming the streams. Do the new rules address this?*

*Rocky Parsons responded by saying that design criteria for drainage control structures is found in the technical handbook. Silt fences are not adequate for sediment control. The drainage system must be designed to hold .125 ac/ft of sediment for each acre of disturbed land. All runoff must pass through a drainage control structure. There is a provision for less sediment control (1/2 factor) for certain circumstances as approved by the Director. Effluent limits as established in the NPDES permit must be met.*

Tony Grbac, Office of Surface Mining, addressed the following rule:

**199CSR1 - "SURFACE MINING BLASTING RULE"**

Tony began by briefing the Council on the history of the Surface Mining Blasting Rule. This rule is being proposed to comply with SB681 - passed during the last session. This bill created the Office of Explosives and Blasting and the Office of Coalfield Community Development, which is under the West Virginia Development Office. The proposed rule will regulate blasting laws and rules associated with all surface-mining operations. All duties currently performed by OMR related to blasting, and all rules which now regulate blasting (38CSR2C) will be transferred to this new office. Besides regulating blasting on all surface mining operations, it will also implement and oversee pre-blast survey processes; maintain and operate a system to receive and address questions, concerns and complaints relating to mining



operations; determine the qualifications for individuals and firms performing pre-blast surveys; establish the education, training, examination and certification of blasters; administer a claims process for property damage caused by blasting; and conduct a study of blasting and make recommendations regarding any appropriate rule or code changes.

Tony explained that the revenue generated by the proposed fee in 199CSR1 (one-half cent times the number of pounds of explosive material used during the preceding month for any purpose on the surface mining operations) would fund both the offices, as required by SB681. After one year of collection, both offices are to report to the Legislature as to whether the revenue collected is sufficient to operate both offices.

*After several minutes of discussion between DEP and the Council members, Bill Raney expressed his concern in filing the rule for public hearing in the specified time frame. Mr. Raney asked if anyone outside DEP has been involved in drafting the rule. OMR answered by saying the rule was drafted by several staff within OMR. Mr. Raney replied that he believes there will be serious concerns with this rule once industry has had an opportunity to review it. He believes the rule drafting process definitely needs input from firms and individuals outside DEP, and he thinks the process will go smoother once everyone has had the opportunity to address their concerns. Mr. Raney recommended that the Director withhold this rule from the list of rules DEP proposes to file for public hearing/comment period in the coming week to give all interested parties a chance to participate in drafting the rule.*

*After discussion of this recommendation, Chairman Miano said he believes the best approach would be to continue with the filing of the proposed rule for public hearing, start the rule in the normal process and time frame, and in the meantime he would commit to putting together a work group of interested parties to discuss the rule. If DEP feels that more time is needed once the group begins their work on the rule, he will consider the possibility of either extending the comment period or filing for another public hearing. He said he will also decide in the near future whether DEP will file the rule as an "Emergency Rule" since HB 681 will become effective on June 11.*

*Council members also pointed out a typographical error in subdivision 3.9.a.3. of the rule relating to cross-references that will be corrected by DEP.*

Barb Taylor and Mike Johnson, Office of Water Resources, briefed Council on the following rules:

- 47CSR57A - "Groundwater Protection Standards at Steam Electric Generating Facilities"
- 47CSR26 - "Water Pollution Control Permit Fee Schedule"
- 47CSR31 - "State Water Pollution Control Revolving Fund Program Rule"

Barb described the proposed "new" rule relating to Groundwater Protection Standards at Steam Electric Generating Facilities. She noted that the rule is a result of a Notice of Intent filed on October 24, 1994, by the West Virginia Steam Electric Generation Industry, with the Director of DEP, in accordance with 47CSR57 to apply for a class variance for all West Virginia power stations and associated disposal sites. At that time, DEP provided AEP and AP with the

opportunity to conduct a four-year study to gather the necessary data to support their variance request. The objectives were met by assembling and reviewing data, estimating potential impacts to receptors, and performing an economic assessment impact analysis to the industry, commercial enterprises, and citizens at large if compliance with the Groundwater Protection Act were required without benefit of the variances. After review of the four-year study, the Director determined that granting this request for a variance at these locations would not pose adverse effects to human health or the environment. There are no human or environmental sensitive receptors between the coal storage areas or as ponds; therefore, it is unlikely there will be adverse affects. Barb gave each member a copy of the four-year study on which the Director made his determination.

Chairman Miano told Council that DEP is definitely willing to look at such cases where extensive research and study have been done by the regulated community to back up their findings before granting such variances, and believes DEP will see more studies like this in the future.

Barb next apprised the members on the proposed amendments of the Water Pollution Control Permit Fee Schedule. She stated that amendments are being proposed as a result of HB 2684, passed March 11, 1999, and effective ninety days from passage. The Director is required to implement an emergency rule to implement the fee schedule authorized by the amendments by July 1, 1999. This rule was filed as an "Emergency Rule" on June 7, 1999.

Mike Johnson, Office of Water Resources' Construction Assistance Office, briefed the Council on 47CSR31 - the Water Pollution Control Revolving Fund Program rule. The amendments to this rule are being proposed to allow the State Revolving Fund low interest terms to be extended from 20 years to 30 years for communities that qualify as "disadvantaged." There is only one other state in the country to receive such approval from EPA. Mike informed the Council that he was only recently made aware of this extension by EPA to extend the low interest loans from 20 to 30 years while attending a meeting out of state. This rule was filed as an "Emergency Rule" on May 24, 1999.

***Council members unanimously agreed that Mike Johnson should be commended for gathering this information and proposing the amendment to the rule that will enable disadvantaged communities to immediately take steps toward constructing watershed projects that will provide affordable monthly sewer rates.***

#### Open Discussion:

Chairman Miano and Council members expressed their compliments to the program offices for all their hard work, especially with the stakeholders process -- it is obvious a lot of hard work has gone into the process in order to make their efforts more productive.

Bill Raney asked a question relating to the "More or Less" Stringency statement that appears on the front of some DEP rules, but not on others, and voiced his concern if DEP is paying close attention to this, or if the same statement is appearing with all proposed rules. Carrie Chambers from the Director's Office explained that statement was once required to be included in the "General" section of each rule; however, it is now placed in the briefing document that is attached to each rule, and required by the Secretary of State's Office and the

Legislative Rule-Making Review Committee, before it is filed. She went on to explain that with the rush to get draft copies of the rules to Council members as soon as possible, some of the Briefing Documents had not been completed, but would be attached to all DEP rules before they are filed for public hearing. Chairman Miano went on to say it is his belief that all program offices are carefully scrutinizing each rule before that decision is made.

Chairman Miano thanked Council for taking time from their busy schedules to review the extensive list of DEP's proposed rules. He informed the Council that the minutes would be left open for comment until Wednesday, June 16, at which time the minutes will be attached to the rules and filed with the Secretary of State's Office and the Legislative Rule-Making Review Committee for notice of public hearing/comment period.

Before adjourning the meeting, the Council informed Chairman Miano that they would prefer beginning future meetings at 10:00 a.m., instead of the usual time of 1:00 p.m. The meeting was then adjourned at 3:30 p.m.

## APPENDIX B

### FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR2 - "To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers"

Type of Rule:     X     Legislative          Interpretive          Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates: The revisions to 45CSR2 proposed herein will have minimal effect on the cost to the Office of Air Quality and implementation will be absorbed into the existing work environment. Costs are covered under previous budget estimates.
3. Objectives of these rules: The objective of this rule is to set standards for particulate matter weight and visible emission from fuel burning units. The rule is also part of the West Virginia State Implementation Plan approved by the USEPA for attainment and maintenance of attainment of the National Ambient Air Quality Standards for particulate matter.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

The changes proposed herein will have minimal effect on the cost to operators of large coal-fired burning units to cover additional recordkeeping requirements and may result in decreased cost for units combusting wood or natural gas because of reduced recordkeeping requirements.

C. Economic Impact on Citizens/Public at Large.

There will be no economic impact on the citizens or public at large in West Virginia resulting from the revisions contained herein.

Date: 6/11/99

Signature of Agency Head or Authorized Representative

Karen G. Watson  
Karen G. Watson, Attorney

RECEIVED

TITLE 45  
LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

99 AUG 16 AM 10:53

OFFICE OF AIR QUALITY  
SERIES 2

SERIES 2  
TO PREVENT AND CONTROL PARTICULATE AIR  
POLLUTION FROM COMBUSTION OF FUEL IN INDIRECT HEAT EXCHANGERS

§45-2-1. General.

1.1. Scope. -- ~~Series 2~~ This rule establishes emission limitations for smoke and particulate matter which are discharged from fuel burning units. The Appendix to this rule incorporates the compliance determination methods and procedures previously contained in 45CSR2A -- "TP-2 -- Compliance Test Procedures for Rule 2 -- To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers".

1.2. Authority. -- W. Va. Code §§22-5-1 et seq.

1.3. Filing Date. -- ~~April 28, 1995.~~

1.4. Effective Date. -- ~~May 1, 1995.~~

1.5. Repeal of Former Rule. -- ~~This legislative rule repeals and replaces 45CSR2A -- "TP-2 -- Compliance Test Procedures for Rule 2 -- To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers" which was filed on September 16, 1988 and became effective on July 14, 1989. Former Rules -- This legislative rule amends 45CSR2 - "To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers" which was filed on April 28, 1995 and became effective on May 1, 1995.~~

1.6. ~~Incorporation by Reference -- Federal Counterpart Regulation. -- Compliance test procedures established by USEPA are incorporated by reference in this rule. Since the particulate matter emissions standards and other implementing provisions of this rule were established as major elements of the State Implementation Plan (SIP) to assure attainment with the National Ambient Air Quality Standards for particulate matter, the~~

~~Director has determined there is no counterpart federal rule.~~

§45-2-2. Definitions.

2.4.1. "ASTM" means American Society for Testing and Materials.

2.1.2. "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.

2.2.3. "Air Pollution" or "statutory air pollution" shall have the meaning ascribed to it in W. Va. Code §22-5-2.

2.3.4. "Air Pollution Control Equipment" means any equipment used for collecting or confining particulate matter for the purpose of preventing or reducing the emission of this air pollutant into the open air.

2.5. "Control Equipment" means any equipment used for collecting or confining particulate matter for the purpose of preventing or reducing the emission of this air pollutant into the open air.

2.6. "Director" means the ~~D~~director of the West Virginia ~~E~~division of ~~E~~environmental ~~P~~protection or such other person to whom the ~~D~~director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

2.7. "Discharge Point" means the point at which particulate matter is released from a stack into open air.

2.8. "Distillate Oil" means fuel oil that complies with the specifications for fuel oil numbers

1 or 2, as defined by the American Society for Testing and Materials in ASTM D396-98, "Standard Specification for Fuel Oils".

2-8-2.9. "Fuel" means any form of combustible matter (solid, liquid, vapor; or gas) that is used as a source of heat.

2-9-2.10. "Fuel Burning Unit" means and includes any furnace, boiler apparatus, device, mechanism, stack; or structure used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer. For the purposes of this rule, all fuel burning units are classified in the following categories:

2-9-a-2.10.a. Type 'a' means any fuel burning unit which has as its primary purpose the generation of steam or other vapor to produce electric power for sale.

2-9-b-2.10.b. Type 'b' means any fuel burning unit not classified as a Type 'a' or Type 'c' unit such as industrial pulverized-fuel-fired furnaces, cyclone furnaces, gas-fired and liquid-fuel-fired units.

2-9-c-2.10.c. Type 'c' means any hand-fired or stoker-fired fuel burning unit not classified as a Type 'a' unit.

2-10-2.11. "Fugitive Particulate Matter" means any and all particulate matter generated by any operation involving or associated with the combustion of fuel in fuel burning units which, if not confined, would be emitted directly into the open air from points other than a stack outlet.

2-11-2.12. "Fugitive Particulate Matter Control System" means any equipment or method used to confine, collect; or dispose of fugitive particulate matter, including, but not limited to, hoods, bins, duct work, fans; and air pollution control equipment.

2-12-2.13. "Heat Input" means the rate of heat release from all fuels fired in all similar units vented by the test stack during the test run period.

2-12-a-2.13.a. "Design Heat Input (DHI)" means the heat input level (in MM Btu/hr) for which an individual fuel burning unit has been designed to be operated during continuous operation.

2-12-b-2.13.b. "Total Design Heat Input (TDHI)" means the sum of the design heat inputs for all similar units located at one plant.

2-12-c-2.13.c. "Normal Maximum Operating Load (NMOL)" means the sum of the Design Heat Input levels (in MM Btu/hr) of the similar unit(s) vented by the test stack, unless the owner/operator has elected to operate one or more of the similar units vented by the test stack at or below a specified percentage of its Design Heat Input level as part of a compliance program, permit; or consent order officially accepted by the Director. In such event, the NMOL is the sum of the Design Heat Input levels or fractions thereof as appropriate (i.e.,  $NMOL = 0.75 DHI_1 + DHI_2$ ).

2.14. "Indirect Heat Exchanger" means a device that combusts any fuel and produces steam or heats water or any other heat transfer medium. This term includes any duct burner that combusts fuel and is part of a combined cycle system. This term does not include process heaters as defined in subsection 2.26.

2-13-2.15. "Laboratory Official" means the person, qualified by experience or education, who is charged with overseeing or conducting the laboratory analysis of the collected samples. This person is responsible for ensuring the accuracy and validity of the laboratory results.

2-14-2.16. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation; or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

2.17. "Natural Gas" means (1) a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the

earth's surface, of which the principal constituent is methane, or (2) liquefied petroleum (LP) gas, as defined by the American Society for Testing and Materials in ASTM D1835-97, "Standard Specification for Liquefied Petroleum Gases".

2-15-2.18. "Normal Operation" when used in the context of fuel quality and combinations fired, means the type, quality, and combination of fuel(s) fired which is representative of the fuel or fuel combination fired, in the unit(s) tested, over a reasonable period prior to the test, and the fuel or fuel combination which might reasonably be expected to continue to be fired in this unit after the test. If the type of fuel, quality or combination used in the unit is variable, use the type, quality, and/or combination fired in day-to-day operation which can reasonably be expected to produce the greatest particulate matter loading to the control equipment (e.g., if coal is fired eight months out of the year and gas is fired four months out of the year, coal is to be burned during the test).

2.19. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

2-16-2.20. "Owner or Operator" means the person responsible for the compliance of the fuel burning units subject to the provisions of 45CSR2.

2-17-2.21. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2-18-2.22. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other State, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature.

2-19-2.23. "Plant" means and includes all fuel burning units, source operations, equipment, and grounds utilized in an integral complex.

2-20-2.24. "Prefilter" means a filter used in the sampling train prior to the primary filter for the

purpose of reducing the particulate matter build-up on the primary filter.

2-21-2.25. "Primary Filter" means the last filter used in the sampling train to separate the particulate matter sample from the sampled stack gas.

2.26. "Process Heater" means a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

2-22-2.27. "Probe" means the part of the pitot tube assembly (nozzle, sample tube, pitot tube, filter holder(s), sensor(s)), which precedes the last filter in the sampling train and conveys the sample gas and particulate matter from the nozzle inlet to the last filter disc used for collecting stack particulate matter.

2.28. "Residual Oil" means crude oil, fuel oil that does not comply with the specifications under the definition of distillate oil, and all fuel oil numbers 4, 5 and 6, as defined by the American Society for Testing and Materials in ASTM D396-98, "Standard Specification for Fuel Oils".

2-23-2.29. "Sampling Plane" means the imaginary plane located perpendicular to the gas flow in the duct or stack at the place selected for the extraction of the required samples.

2.30. "Shipment" means any discrete, identifiable quantity of fuel for which a quality report is available. For example, a fuel shipment may be all fuel delivered from a specific lot, identified by the lot number, or fuel delivered under a specific purchase order number.

2-24-2.31. "Shutdown" means the cessation of operation of a facility fuel burning unit(s) subject to this rule for any purpose.

2-25-2.32. "Similar Unit(s)" means all Type 'a', or all Type 'b'; or all Type 'c' fuel burning units located at one plant.



~~2.26-2.33.~~ "Smoke" means small gas borne and airborne particulate matter arising from a process of combustion in sufficient number to be visible.

~~2.27-2.34.~~ "Stack", for the purposes of this rule, means, but is not be limited to, any duct, control equipment exhaust, or similar apparatus, which vents gases and/or particulate matter into the open air.

~~2.28-2.35.~~ "Start-up" means the setting in operation of a fuel burning unit subject to this rule for any purpose.

~~2.29-2.36.~~ "Test Team Supervisor" means the person, qualified by experience or education, who is charged with supervising the stack test. This person is responsible for ensuring the validity and correctness of the submitted test results.

2.37. "Wet Scrubber System" means any emission control device that mixes an aqueous stream or slurry with the exhaust gases from an indirect heat exchanger to control emissions of particulate matter (PM) or SO<sub>2</sub>.

2.38. "Wood" means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including, but not limited to, sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings and processed pellets made from wood or other forest residues.

2.39. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W.Va. §22-5-1 et seq.

#### **§45-2-3. Visible Emissions of Smoke And/Or Particulate Matter Prohibited And Standards of Measurement.**

3.1. No person shall cause, suffer, allow, or permit emission of smoke and/or particulate matter into the open air from any fuel burning unit which is ~~darker in shade or appearance greater~~ than ten (10) percent opacity based on a six minute block average.

3.2. Compliance with the visible emission requirements of subsection 3.1 ~~of this section~~ shall be determined in accordance with 40 CFR Part 60, Appendix A, Method 9 ~~(July 1, 1994)~~ or by using measurements from continuous opacity monitoring systems approved by the Director. The Director may require the installation, calibration, maintenance and operation of continuous opacity monitoring systems and may establish policies for the evaluation of continuous opacity monitoring results and the determination of compliance with the visible emission requirements of subsection 3.1. ~~of this section.~~ Compliance Continuous opacity monitors shall not be required on fuel burning units which employ wet scrubbing systems for emission control.

3.3. If the owner or operator of a fuel burning unit can demonstrate to the satisfaction of the Director that compliance with subsection 3.1 cannot practically be achieved with respect to soot blowing operations or during the cleaning of a fire box, the Director may formally approve specific an alternative visible emission standards applicable to the fuel burning unit for soot blowing periods; provided that the exception period shall not exceed a total of twelve (12) minutes per eight hour period six (6) six minute time periods in a calendar day with visible emissions limited to forty thirty percent (40 30%) opacity, as determined in accordance with 40 CFR Part 60, Appendix A, Method 9, or by using measurements from a certified continuous opacity monitoring system.

3.4. The Director may approve an alternative visible emission standard to that required under subsection 3.1 ~~of this section~~, not to exceed twenty (20) percent opacity, upon the filing of a written petition by the owner or operator, which petition shall include a demonstration satisfactory to the Director:

3.4.a. That it is technologically or economically infeasible to comply with subsection 3.1;

3.4.b. That emissions from the fuel burning unit for which an alternative visible emission standard is proposed impact no area in which the

National Ambient Air Quality Standards for particulate matter are being exceeded nor will any such emissions cause or contribute to a violation of the National Ambient Air Quality Standards for particulate matter in an area which currently meets such standards;

3.4.c. That the particulate weight emission standards under section 4 of this rule are being met, as determined in accordance with the Appendix to this rule -- "Compliance Test Procedures for 45CSR2";

3.4.d. That the fuel burning unit for which an alternative visible emission standard is proposed is at all times operated and maintained in accordance with the provisions of subsection 9.2 of this rule;

3.4.e. That the fuel burning unit for which an alternative visible emission standard is proposed and its associated air pollution control equipment are incapable of being adjusted or operated at normal operating loads to meet the applicable opacity visible emission standard;

3.4.f. That the owner or operator will install, calibrate, maintain and operate a continuous opacity monitoring system approved by the Director, for the fuel burning unit for which an alternative visible emission standard is proposed, and will submit the results of such monitoring system to the Director on a calendar monthly basis in a format approved by the Director, provided that this provision shall not apply to fuel burning units which employ wet scrubbing systems for emission control; and

3.4.g. That all other requirements of law and rules enforced by the Director will be met.

#### §45-2-4. Weight Emission Standards.

##### 4.1.

4.1.a. No person shall cause, suffer, allow; or permit the discharge of particulate matter into the open air from all fuel burning units located at one

plant, measured in terms of pounds per hour in excess of the amount determined as follows:

~~a.1.4.1.a.~~ For Type 'a' fuel burning units, the product of 0.05 and the total design heat inputs for such units in million British Thermal Units (B.T.U.'s) per hour, provided however that no more than twelve hundred (1200) pounds per hour of particulate matter shall be discharged into the open air from all such units;

~~a.2.4.1.b.~~ For Type 'b' fuel burning units, the product of 0.09 and the total design heat inputs for such units in million B.T.U.'s per hour, provided however that no more than six hundred (600) pounds per hour of particulate matter shall be discharged into the open air from all such units; and

~~a.3.4.1.c.~~ For Type 'c' fuel burning units, in excess of the values listed in Table 45-2A, provided however that no more than three hundred (300) pounds per hour of particulate matter shall be discharged into the open air from all such units.

4.1.c.1. For values between any two corresponding consecutive values listed in Table 45-2A, linear interpolation is to be used for both columns.

~~4.1.b.4.2.~~ Subject to the provisions of this rule, allowable emission rates for individual stacks shall be determined by the owner and/or operator and registered with the Director at the request of, and on forms provided by, the Director. Such rates shall be subject to review and approval by the Director.

4.2.a. The approved set of individual stack allowable emission rates shall become an official part of the compliance schedule and/or any permits concerning such source(s), and shall not be changed without the prior written approval of the Director.

~~4.1.c.4.3.~~ If the number of similar fuel burning units located at one plant, each of which is meeting the requirements of this rule, is expanded by the addition of a new unit(s), the total allowable emission rate for the new unit(s) shall be determined by the following formula. However, the maximum

allowable emission rates given in subsection 4.1.a are not to be exceeded:

$$R_e = \left( 1 - \left( \frac{H_d - R_d}{H_d} \right) \right) R_{et}$$

$$R_e = \left( 1 - \left( \frac{H_{et} - H_e}{H_{et}} \right) \right) R_{et}$$

Where,

$R_e$  is the total allowable emission rate in pounds per hour for the new fuel burning unit(s);

$H_{et}$  is the total design heat input in million B.T.U.'s per hour of the existing and new similar units;

$R_{et}$  is the total allowable emission rate in pounds per hour corresponding to  $H_{et}$ ; and

$H_e$  is the total design heat input in million B.T.U.'s per hour for the new fuel burning unit(s).

~~4.2.4. No person shall cause, suffer, allow, or permit the addition of sulfur oxides to a combustion unit exit gas stream for the purpose of improving emissions control equipment efficiency shall be reviewed by the Director. No person shall cause, suffer, allow or permit the addition of sulfur oxides as described above unless written approval for such addition is provided by the Director.~~

~~4.3.5. The provisions of subsection 4.24 of this section shall not apply to combustion units in operation on or before September 1, 1974.~~

#### §45-2-5. Control of Fugitive Particulate Matter.

5.1. No person shall cause, suffer, allow, or permit any source of fugitive particulate matter to operate that is not equipped with a fugitive particulate matter control system. This system shall be operated and maintained in such a manner as to minimize the emission of fugitive particulate matter. Sources of fugitive particulate matter associated with fuel burning units shall include, but not be limited to, the following:

5.1.a. Stockpiling of ash or fuel either in the open or in enclosures such as silos;

5.1.b. Transport of ash in vehicles or on conveying systems, to include spillage, tracking; or blowing of particulate matter from or by such vehicles or equipment; and

5.1.c. Ash or fuel handling systems and ash disposal areas.

#### §45-2-6. Registration.

6.1. All persons owning and/or operating fuel burning units in existence on September 1, 1974 not previously registered shall have registered such units with the Director. The information required for registration shall be determined and provided in the manner specified by the Director. Registration forms should be requested from the Director by the owner and/or operator of fuel burning unit(s) subject to the provisions of this section.

6.2. The owner and/or operator of fuel burning units that were under construction or on which construction was initiated as of October 1, 1974 not previously registered shall have registered such fuel burning units with the Director.

#### §45-2-7. Permits.

7.1. ~~After September 1, 1974, n~~ No person shall construct, or modify or relocate any fuel burning

~~unit without first obtaining a permit for such construction, or modification or relocation. Applications for permits shall be made upon forms available from the Director and shall include such information as in the judgment of the Director will enable him or her to determine whether such source(s) will be so designed as to operate in conformance with the provisions of this rule and other applicable rules, the West Virginia Code and will not cause or contribute to the violation of Ambient Air Quality Standards in accordance with the provisions of W. Va. Code §22-5-1 et seq., and Series 13, 14, 19 and 30 of Title 45.~~

**§45-2-8. Reports And Testing. Testing, Monitoring, Recordkeeping and Reporting.**

**8.1. Testing.**

8.1.a. The owner or operator of a fuel burning unit(s) shall demonstrate compliance with section 3 by periodic testing in accordance with 40 CFR Part 60, Appendix A, Method 9, or a certified continuous opacity monitoring system, as approved by the Director, and section 4 by periodic particulate matter stack testing, conducted in accordance with the appropriate test method set forth in the Appendix to this rule or other equivalent EPA approved method approved by the Director. The owner or operator shall conduct such testing at a frequency to be established by the Director which may be set forth in an interpretive rule as authorized pursuant to W.Va. Code §29A-1-2.

8.1.b. At such reasonable times as the Director may designate, the owner or operator of any fuel burning unit(s) may be required to conduct or have conducted tests to determine the compliance of such unit(s) with the emission limitations of section 4. Such tests shall be conducted in accordance with the appropriate method set forth in the Appendix to this series rule or other equivalent EPA approved method approved by the Director. The Director, or his duly authorized representative, may at his option witness or conduct such tests. Should the Director exercise his option to conduct such tests, the operator will provide all necessary sampling connections and sampling ports located in such manner as the Director may require, power for test

equipment, and the required safety equipment such as scaffolding, railings, and ladders to comply with generally accepted good safety practices.

8.1.b.1. Sufficient information on temperatures, velocities, pressures, weights and dimensional values shall be reported to the Director, with such necessary commentary as he may require to allow an accurate evaluation of the reported test results and the conditions under which they were obtained.

8.2.1.c. The Director, or his duly authorized representative, may conduct such other tests as he may deem necessary to evaluate air pollution emissions other than those noted in subsection 4.1.

**8.2. Monitoring.**

8.2.a. The owner or operator of a fuel burning unit(s) shall monitor compliance with section 3 as set forth in an approved monitoring plan for each emission unit. Such monitoring plan(s) shall include, but not be limited to, one or more of the following: continuous measurement of emissions, monitoring of emission control equipment, periodic parametric monitoring, or such other monitoring as approved by the Director.

8.2.a.1. Direct measurement with a certified continuous opacity monitoring system (COMS) shall be deemed to satisfy the requirements for a monitoring plan. Such COMS shall be installed, calibrated, operated and maintained as specified in 40 CFR Part 60, Appendix B, Performance Specification 1 (PS1). COMS meeting the requirements of 40 CFR Part 75 (Acid Rain) will be deemed to have satisfied the requirements of PS1.

8.2.a.2. Monitoring plans pursuant to subdivision 8.2.a. shall be submitted to the Director within six (6) months of the effective date of this rule. Approval or denial of such plans shall be within twelve (12) months of the effective date of this rule or six (6) months after receipt of the monitoring plan, whichever is later. The owner or operator may presume approval until notified otherwise.

8.2.a.3. Excursions outside the range of the control equipment or operational parameters established in an approved monitoring plan will not necessarily constitute a violation of this rule.

8.3. The operators of fuel burning units shall submit data on operating schedules and the quality of fuel used in such units. Such data shall be reported in the manner the Director may specify, and will include, but not necessarily be limited to, information such as the number of start-ups and shut-downs, the quantity of fuel burned, and the ash, sulfur, moisture, volatile matter, and B.T.U. content.

### 8.3. Recordkeeping and Reporting.

8.3.a. The owner or operator of a fuel burning unit(s) shall maintain on-site all records of monitored data established in the monitoring plan pursuant to subdivision 8.2.a. Such records shall be made available to the Director or his duly authorized representative upon request.

8.3.b. The owner or operator shall submit a periodic exception report to the Director, in a manner and at a frequency to be established by the Director and set forth in an interpretive rule as authorized pursuant to W. Va. Code §29A-1-2. Such exception report shall provide details of all excursions outside the range of measured emissions or monitored parameters established in an approved monitoring plan, and shall include, but not be limited to, the time of the excursion, the magnitude of the excursion, the duration of the excursion, the cause of the excursion and the corrective action taken.

8.3.c. The owner or operator shall maintain records of the operating schedule and the quantity and quality of fuel consumed in each fuel burning unit in a manner to be established by the Director and set forth in an interpretive rule as authorized by W. Va. Code §29A-1-2. Such records are to be maintained on-site and made available to the Director or his duly authorized representative upon request.

8.3.d. Where appropriate the owner or operator of a fuel burning unit(s) may maintain such records in electronic form.

8.4. Within a reasonable time after the start-up or shut-down of a fuel burning unit(s), the owner and/or operator of such unit(s) shall notify the Director of the start-up or shut-down by telephone or telefax or by such other method determined by the Director. This requirement will be deemed to have been satisfied with respect to any unit for which approved continuous opacity monitoring data, including start-up and shut-down dates, are submitted to the Director no less frequently than on a calendar month basis.

### 8.4. Exceptions.

8.4.a. The owner or operator of a fuel burning unit(s) may petition for alternatives to testing, monitoring and reporting requirements prescribed pursuant to this rule for conditions, including, but not limited to, the following:

8.4.a.1. Infrequent use of a fuel burning unit(s).

8.4.a.2. Continuous emission measurement equipment that does not meet the design requirements of 40 CFR Part 60, Appendix B, Performance Specification 1 (PS1) or 40 CFR 75 (Acid Rain), where it can be adequately demonstrated that there is a definite and consistent relationship between its measurement and the measurements of opacity by a system complying with PS1. The Director may require that such demonstration be performed for each fuel burning unit.

8.4.a.3. Where a single fuel burning unit may have more than one emission point.

8.4.a.4. Where the desired location of the continuous monitoring system does not meet the requirements of the applicable performance standard, when the owner or operator can demonstrate that installation at alternative locations will enable accurate and representative measurements.

8.4.b. The owner or operator of a fuel burning unit(s) which combusts only natural gas

shall be exempt from the requirements of subdivision 8.1.a and subsection 8.2.

8.4.c. The owner or operator of a fuel burning unit(s) with a Design Heat Input of less than 100 mmBtu/hr shall be exempt from the periodic testing requirements of subdivision 8.1.a and the monitoring requirements of subsection 8.4. The Director reserves the right to require testing pursuant to subdivisions 8.1.b and 8.1.c.

8.5. The Director may publish, and from time to time revise, testing, monitoring, reporting and recordkeeping instructions implementing the provisions of this section rule in the form of an interpretive rule as authorized pursuant to W.Va. Code §29A-1-2.

#### **§45-2-9. Start-ups, Shut-downs and Malfunctions.**

9.1. The opacity visible emission standards set forth in section 3 shall apply at all times except in periods of start-ups, shut-downs; and malfunctions. Where the Director believes that start-ups and shut-downs are excessive in duration and/or frequency, the Director may require an owner or operator to provide a written report demonstrating that such frequent start-ups and shut-downs are necessary.

9.2. At all times, including periods of start-ups, shutdowns; and malfunctions, owners and operators shall, to the extent practicable, maintain and operate any fuel burning unit(s) including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Director which may include, but is not limited to, monitoring results, opacity visible emission observations, review of operating and maintenance procedures; and inspection of the source.

9.3. ~~Except as provided in subsection 9.4.1~~ The owner or operator of a fuel burning unit(s) subject to this rule shall report to the Director, ~~by telephone or telefax,~~ any malfunction of such unit or its air pollution control equipment which results in any

excess particulate matter emission rate or excess opacity (i.e., emissions exceeding the standards in section 3 and 4 ~~of this rule~~) ~~within twenty-four (24) hours of becoming aware of such condition.~~ The owner or operator shall file a certified written report concerning the malfunction with the Director within ~~ten (10) days providing the following information:~~ as provided in one of the following subdivisions:

~~9.4.9.3.a.~~ Excess opacity periods meeting the following conditions may be reported on a quarterly basis unless otherwise required by the Director:

~~9.4.a.9.3.a.1.~~ The excess opacity period does not exceed thirty (30) minutes within any 24-hour period; and

~~9.4.b.9.3.a.2.~~ Excess opacity does not exceed 40%; and

~~9.4.c.~~ The excess opacity period is not associated with substantial failure, deactivation or ~~by-pass of particulate matter emissions control equipment.~~

9.3.b. The owner or operator shall report to the Director any malfunction resulting in excess particulate matter or excess opacity, not meeting the criteria set forth in subdivision 9.3.a, by telephone, telefax, or email by the end of the next business day after becoming aware of such condition. The owner or operator shall file a certified written report concerning the malfunction with the Director within thirty (30) days providing the following information:

~~9.3.a.b.1.~~ A detailed explanation of the factors involved or causes of the malfunction;:

~~9.3.b.2.~~ The date and time of duration (with starting and ending times) of the period of excess emissions;:

~~9.3.c.b.3.~~ An estimate of the mass of excess emissions discharged during the malfunction period;:

~~9.3.d.b.4.~~ The maximum opacity measured or observed during the malfunction;:

9.3.e.b.5. Immediate remedial actions taken at the time of the malfunction to correct or mitigate the effects of the malfunction; and

9.3.f.b.6. A detailed explanation of the corrective measures or program that will be implemented to prevent a recurrence of the malfunction and a schedule for such implementation.

9.54. A malfunction, as defined under this rule, constitutes an affirmative defense to an action brought for noncompliance with the weight emission standards under section 4 of this rule if the owner or operator demonstrates to the satisfaction of the Director that the requirements of subsections 9.2 and 9.3 of this section have been met.

9.65. In any enforcement proceeding, the owner or operator seeking to establish the occurrence of a malfunction has the burden of proof.

#### §45-2-10. Variances.

10.1. In the event of an unavoidable shortage of fuel having characteristics or specifications necessary for a fuel burning unit to comply with the opacity visible emission standards set forth in section 3 or any emergency situation or condition creating a threat to public safety or welfare, the Director may grant an exception to the otherwise applicable visible emission standards for a period not to exceed fifteen (15) days, provided that visible emissions during the exception period do not exceed a maximum six (6) minute average of thirty (30) percent and that a reasonable demonstration is made by the owner or operator that the emission standards under section 4 of this rule will not be exceeded during the exemption period.

10.2. In the event a fuel burning unit employing a flue gas desulfurization system must by-pass such system because of necessary planned or unplanned maintenance, visible emissions may not exceed twenty percent (20%) opacity during such period of maintenance. The Director may require advance notice of necessary planned maintenance, including a description of the necessity of the maintenance activity and its expected duration and may limit the duration of the variance or the amount

of the excess opacity exception herein allowed. The Director shall be notified of unplanned maintenance and may limit the duration of the variance or the amount of excess opacity exception allowed during unplanned maintenance.

#### §45-2-11. Exemptions.

11.1. ~~All~~ Any fuel burning unit(s) having a heat input under ten (10) million B.T.U.'s per hour will be exempt from sections 4, 5, 6, 8 through and 9. However, failure to attain acceptable air quality in parts of some urban areas may require the mandatory control of these sources at a later date.

#### §45-2-12. Inconsistency Between Rules.

12.1. In the event of any inconsistency between this rule and Appendix and any other rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

TABLE 45-2A

Total Design Heat Input for All  
Type 'c' Fuel Burning Units  
Located at One Plant in  
Millions of B.T.U.'s Per Hour

Total Allowable Particulate  
Matter Emission Rate for  
All Type 'c' Fuel Burning  
Units Located at One Plant  
in Pounds Per Hour

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10	3.4
20	5.6
40	9.0
60	11.7
80	14.4
100	16.6
200	26.4
400	42.2
600	54.0
3,333	300.0



## 45CSR2 APPENDIX

## COMPLIANCE TEST PROCEDURES FOR 45CSR2

## Section 1. General.

Scope. -- It is the intent and purpose of this Appendix to establish stack testing procedures for determination of compliance with the weight emission standards as set forth in 45CSR2 - "To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers". To this end, it is the intent of the Division of Environmental Protection Office of Air Quality to adopt by reference, certain of the Reference Methods and other test methods set forth in 40 CFR, Part 60, Appendix A [as of July 1, 1994]. These methods set forth acceptable stack testing, calibration, and laboratory procedures including appropriate apparatus with provisions for certain minor exceptions as delineated in Section 6 of this Appendix.

## Section 2. [RESERVED].

## Section 3. Symbols.

3.1.  $Ab$  =  $(S_d) \times (V_a)$ ,  $Ab$  is the estimate of the weight of residue, prior to use, in the acetone wash volume used (grams)

3.2.  $An$  = cross-sectional area of the sample nozzle ( $ft^2$ )

3.3.  $As$  = cross-sectional area of the sample plane ( $ft^2$ )

3.4. ASTM = American Society for Testing and Materials

3.5.  $B$  = percent moisture in the sampled gas, by volume, on a wet basis, divided by 100

3.6.  $BE$  = the boiler thermal efficiency (percent)

3.7.  $C$  = 453.592 grams/pound

3.8.  $^{\circ}C$  = degrees Centigrade

3.9.  $cfm$  =  
cubic feet per minute

3.10. CEM = continuous emission monitoring equipment

3.11.  $CO$  = carbon monoxide

3.12.  $CO_2$  = carbon dioxide

3.13.  $d$  = diameter of nozzle (inches)

3.14. DGR = dry gas meter reading: the sample gas volume meter reading at meter conditions (cubic feet)

3.15.  $\Delta DGR$  = difference between two consecutive DGR's, the volume sampled at each sampling point (cubic feet)

3.16.  $EA$  = excess air fraction

3.17. F-factor = a factor representing a ratio of the dry flue gases generated to the calorific value of the fuel combusted ( $dscf/10^6$  Btu)

3.18.  $F_i$  = quantity of each fuel fired in a fuel burning unit during the total test run period (in appropriate units)

3.19.  $^{\circ}F$  = degrees Fahrenheit

3.20.  $F_p$  = combined correction factor for units and pitot tube deviation

3.21.  $ft^3$  = cubic feet

3.22.  $ft/min$  = feet per minute

3.23.  $gm$  = grams

3.24.  $hbd$  = average enthalpy of steam/water leaving boiler as blowdown (Btu/lbm)

3.25.  $h_i$  = average enthalpy of steam or other working fluid entering the boiler of the fuel burning unit (Btu/lbm)

3.26.  $h_o$  = average enthalpy of steam or other working fluid leaving the boiler of the fuel burning unit (Btu/lbm)

3.27.  $\Delta H$  = pitot tube differential reading (inches  $H_2O$ )

3.28.  $\Delta H_p$  = indicated differential pressure when the test pitot tube is used at the calibration point

3.29.  $\Delta H_s$  = indicated differential pressure when the standard pitot tube is used at the calibration point

3.30. Hg = mercury

3.31. HI = heat input per fuel burning unit(s) ( $10^6$  Btu per hour)

3.32.  $H_2S$  = hydrogen sulfide

3.33. HVf = higher heating value of the fuel on an as fired basis (in Btu/lbm)

3.34. HVi = average Btu value of each fuel used on an as fired basis, in appropriate units (Btu/lbm, Btu/gal, etc.)

3.35. in. Hg = inches of mercury, pressure

3.36. ISKo = overall isokinetic factor, ratio of total actual sample volume ( $Q_m$ ) to the total isokinetic sample volume ( $Q_o$ ), both volumes adjusted to standard conditions

3.37. ISKp = point isokinetic factor, ratio of the actual sample volume to the isokinetic sample volume

3.38. %ISK =  $100 (ISK_o - 1)$

3.39. Kp = coefficient of deviation of the Type S pitot tube used in sampling, determined by calibration

3.40. Ks = coefficient of deviation for a standard pitot tube

3.41. ibf = pounds force

3.42. lbm = pounds mass

3.43. Ma = particulate matter obtained from the evaporation of the acetone washings (grams)

3.44. Mbd = average mass flow rate of blowdown (lbm/hr)

3.45. Mf = particulate matter collected by filter(s) (grams)

3.46. Mg = molecular weight of gas sample on wet basis

3.47. mf = average mass flow rate of steam through the boiler (lbm/hr)

3.48. mg = milligram

3.49. ml = milliliter

3.50. Mn =  $M_f + M_a - A_b$  (grams), indicated weight of particulate matter collected by the sampling train

3.51. n = number of items in a set of related items

3.52.  $N_2$  = nitrogen

3.53.  $O_2$  = oxygen

3.54.  $\Theta$  = sum of all extraction times at all points sampled per run (min.)

3.55. Pb = atmospheric pressure (in. Hg)

3.56. Pf = ash fraction of the non-metered fuel on an as fired basis

3.57. Pm = absolute pressure of gas at meter (in. Hg)

3.58.  $P_m$  = average absolute pressure of the sampled gas at meter conditions for the test run (in. Hg)

3.59.  $P_s$  = absolute pressure of gas in stack at sampling plane

3.60.  $q_m$  = actual sample volume for each sample point adjusted to 68 °F and 29.92 in. Hg (ft<sup>3</sup>)

3.61.  $Q_m$  = sum of all  $q_m$  for each test run (ft<sup>3</sup>)

3.62.  $q_o$  = volume of sampled gas for each point if isokinetic conditions were maintained, adjusted to 68 °F and 29.92 in. Hg (ft<sup>3</sup>)

3.63.  $Q_o$  = sum of all  $q_o$  for each test run (ft<sup>3</sup>)

3.64.  $S_d$  = residue found in acetone blank (gm/ml)

3.65.  $\pi$  = pi, 3.1416

3.66.  $\Delta t$  = elapsed time at each sampling point (minutes)

3.67.  $T_f$  = temperature of the primary out-of-stack filter holder, when used (°F)

3.68.  $T_m$  = temperature of gas sample at volume meter for each point (°F)

3.69.  $T_m$  = average temperature of gas sample at volume meter for test run (°F)

3.70.  $T_s$  = stack gas temperature (°F)

3.71.  $V_a$  = volume of acetone wash (ml)

3.72.  $V_{ac}$  = vacuum (inches of mercury)

3.73.  $V_m$  = sum of all  $\Delta DGR$  for the test run (ft<sup>3</sup>)

3.74.  $V_{mstd}$  =  $V_m$  corrected to standard conditions

3.75.  $w$  =  $1/(1 - B)$ , ratio of wet gas volume to dry gas volume

3.76.  $W$  =  $W_c + W_d$  (grams), amount of H<sub>2</sub>O removed from the sampled gas

3.77.  $W_c$  = amount of water collected in the condenser or impingers (grams)

3.78.  $W_d$  = amount of water collected by the drying agent in the absorber (grams)

3.79. % = percent

#### Section 4. Adoption of Test Methods.

4.1. For determining compliance with the mass emission rates as delineated in 45CSR2 - "To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers", a person shall utilize those Reference Methods, in particular Method 5, 5B, except as modified by subsection 4.1.a. of this section, or 17, as contained in 40 CFR, Part 60, Appendix A [as of July 1, 1994] with the following amendments:

4.1.a. Primary filter media shall be maintained at, or about, stack temperature. The temperature of the primary filter media shall not exceed that of the stack except that in cases where sampling follows a wet scrubbing device the temperature of the primary filter, initial filter tare, and oven temperature may be adjusted to a maintained temperature of up to 250 °F.

4.1.b. The result of each compliance test is to be the arithmetic average of three (3) complete sampling runs conducted within a seven (7) day period.

4.1.c. A complete sampling run shall be one complete determination of the total particulate matter emission rate through the test stack for which:

c.1. the minimum total sampling time is two (2) hours; and

c.2. the minimum total sample volume is sixty (60) cubic feet adjusted to 68 °F and 29.92

inches of Hg. Smaller sampling volumes and shorter sampling times may be approved by the Director on a case-by-case basis when necessitated by process variables or other factors.

4.1.d. Any and all references in 40 CFR, Part 60, Appendix A, to the "Administrator" is amended to be the "Director".

In carrying out these methods for the purpose of determining mass emission rates, it is understood that other Reference Methods contained in 40 CFR, Part 60, Appendix A are integral parts of Methods 5, 5B, and 17 in particular, but not inclusive, Methods 1, 2, 3, and 4.

## **Section 5. Unit Load and Fuel Quality Requirements.**

5.1. All compliance test runs, which are to be included in the test result for a unit or a specified number of units, shall be conducted while the unit or group of units is operated at or above the normal maximum operating load for the specified unit or group of units; while fuel or combinations of fuel representative of normal operation are being burned; and under such other relevant conditions as the Director may specify based on representative performance of the specified units.

## **Section 6. Minor Exceptions.**

6.1. In the interest of practicality, the Director or his designee may allow minor exceptions, not related to test site safety, to the specifications of these methods, if the Director or his designee concludes that in a particular case, the granting of such exception would not invalidate the test results. If such exceptions are granted, alternate specifications may be prescribed.

6.2. If an exception as described above is granted, the scope of the exception and any alternative specification prescribed shall be recorded in a letter of exception signed by the authorizing official. A copy of such letter of exception shall be attached to the test report.

## **Section 7. Pretest and Post Test General Requirements.**

7.1. The owner/operator required to conduct tests and his test consultants shall become familiar with the requirements of 45CSR2 - "To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers", Reference Methods as contained in 40 CFR, Part 60, Appendix A, and the requirements as delineated in this Appendix, including all forms, equations, and definitions. Questions of interpretation, applicability, or exception, shall be resolved with the Director or his designee prior to conducting the test.

7.2. When a compliance test conducted in accordance with this Appendix is required, the owner or operator of the affected unit(s) shall be notified in writing by the Director or his designee. The notice shall prescribe the following:

7.2.a. the unit(s) to be tested;

7.2.b. the identification number to be assigned to the test;

7.2.c. the date by which the test is to be completed and the test report submitted; and

7.2.d. the person, if other than the Director, to whom the test report is to be submitted, and with whom questions concerning the test procedure may be resolved. Test report forms (~~see Attachment~~) for filing the results of the compliance test are available from the Division of Environmental Protection on request.

7.3. At least thirty (30) days prior to each compliance test, or within such other time period as requested and approved by the Director, a test protocol shall be furnished to the Director for his review and approval and shall include as a minimum, the following information:

7.3.a. Identification and description of the unit(s) that are to be tested.

7.3.b. A discussion of the manner in which the unit(s) shall be operated during the test periods with

respect to operating loads, representativeness of fuel(s) fired, operating temperatures, and other factors which may affect emissions.

7.3.c. A description or listing of unit and control equipment data that shall be monitored and recorded during the test runs.

7.3.d. A description of test methods and equipment that shall be employed with requests for approval of any variances to test method procedures or sampling equipment designs set forth under this Appendix.

7.3.e. A drawing of the stack or duct sections where samples shall be taken showing distances to upstream and downstream gas flow disturbances or bends and changes in duct or stack cross sections.

7.3.f. A drawing of the test plane(s) showing dimensions and number and location of sampling (traverse) points.

7.3.g. The sampling time at each traverse point and total sampling time for each test run. If the sampling time per traverse point is to be less than five (5) minutes, comments shall be included concerning the variability of gas flow and temperatures during the shorter sampling time and how the sampling rate shall be monitored and adjusted to maintain isokinetic conditions.

7.3.h. The minimum volume (SCF) of gas that shall be sampled per test run.

7.3.i. The name of the person to contact concerning the scheduled tests and affiliation of personnel who shall conduct the tests.

7.3.j. A copy of the last individual stack registration approved by the Director in accordance with Sub-Section 4.1 (b) of 45CSR2.

7.3.k. A statement concerning where the laboratory analyses are to be conducted and a description of the chain of custody for collected samples.

7.3.l. The anticipated date that subject testing is to be performed.

7.4. Notification of the actual dates upon which compliance testing will be conducted shall be provided to the Director, in writing, no later than fifteen (15) days prior to the date of the first test run, or within such other time period as requested and approved by the Director, so that he may, at his option, have an observer present during the test runs and sample analyses. Such notification may be submitted with the test protocol, however, the actual date of initial testing shall not be less than thirty (30) days from date of protocol submittal. Within constraints imposed by available facilities, copies of test field data sheets, laboratory sheets, unit operating logs and similar relevant data collected during the test runs shall be provided to the West Virginia Division of Environmental Protection observer upon request at the conclusion of the tests. Any such data or other information so made available shall be treated as confidential upon request by the operator and shall not be made available to the public. The owner/operator shall place the word "confidential" upon all such information which is gathered and retained by the West Virginia Division of Environmental Protection. If facilities and circumstances allow, the West Virginia Division of Environmental Protection test observer shall, at his option, observe the laboratory analyses.

7.5. A compliance test report providing the information summarized below and any additional information that the Director may require shall be submitted to the Director within sixty (60) days, or within such other time period as requested and approved by the Director, of the completion of the compliance testing.

#### 7.5.a. General Information

a.1. Plant name and location

a.2. Units/stacks tested

a.3. Name and address of company performing the tests

## a.4. Test dates and times

## 7.5.b. Report Certification

The following persons shall certify that the test report contains true and accurate information:

## b.1. Test team supervisor

## b.2. Reviewer of test report (if applicable)

b.3. If test is performed by source owner, the report shall also be certified by facility owner/operator

## 7.5.c. Test Summary

## c.1. Description of emissions sources/stacks tested

## c.2. Purpose of test

## c.3. Pollutants measured

## c.4. Operating data

4.A. Unit(s) configuration and air pollution control equipment flow diagrams.

4.B. Summary of operating parameters including steam or electrical production rates and other relevant parameters measured and recorded and/or calculated for test periods shall be attached to the report.

4.C. Pertinent control equipment and operating data recorded and/or calculated for the test period should be attached to the report. As each boiler operation and associated control equipment normally presents a unique case, pertinent data shall be determined on a case-by-case basis.

4.D. Description of any unusual or non-typical operating mode, fuels, soot blowing, blowdown, etc. occurring or used during the tests.

## 7.5.d. Test Results

d.1. Mass emission test results with emissions reported in units of the applicable standard and in pounds per hour.

d.2. Visible emissions test results, if applicable, as measured by observer or transmissometer. If observed by personnel from test company or plant, evidence of observer's certification shall be attached to the report.

d.3. Description of collected samples (if such information is deemed to be useful).

d.4. Description and discussion of real or apparent errors involved in test or process measurements, analysis, etc.

## 7.5.e. Test Procedures

e.1. Description of test equipment including drawing of sampling train.

e.2. Description of test procedures employed with detailed documentation of any deviations from methods required by this Appendix.

e.3. Description of analytical procedures employed with detailed documentation of any deviations from methods required by this Appendix.

e.4. Dimensioned drawing of sampling port location showing distances to upstream and downstream gas flow disturbances.

e.5. Cross-sectional drawing of sampling plane showing location and numbers or other designations of sampling points.

## 7.5.f. Appendix

f.1. Copies of original field data sheets from test runs.

f.2. Copies of original log sheets, strip charts and other process or control equipment data recorded during tests. These attachments shall be certified by a responsible plant official. As each boiler operation and associated control equipment

normally presents a unique case, pertinent data shall be determined on a case-by-case basis.

f.3. Laboratory report including chain of custody.

f.4. Description of test equipment calibration procedures and calibration results for test equipment used.

f.5. Description of calibration performed on devices recording important operating data during the tests.

f.6. Copies of strip charts or other original outputs from continuous emission monitoring (CEM) equipment on the tested source and description of CEM system calibration and operation prior to and/or during tests.

f.7. Originals of any visible emission readings taken during test period.

f.8. Copies of relevant correspondence such as West Virginia Division of Environmental Protection letters approving test method variances.

f.9. Names and titles of persons involved in the test including sampling team members, company personnel, and outside observers.

7.6. Subject to the provisions of Section 6 of this Appendix, Minor Exceptions, a complete sampling run is one complete determination of the total particulate matter emission rate through the test stack for which:

7.6.a. the composite particulate matter sample is extracted from the duct or stack at a location and from the number of sampling points prescribed in Method 1 of 40 CFR, Part 60, Appendix A [as of July 1, 1994];

7.6.b. the sampling equipment and its method of operation for collection of particulate sample meets the criteria and requirements prescribed in Method 5, 5B or Method 17 of 40 CFR, part 60, Appendix A [as of July 1, 1994];

7.6.c. the overall sampling rate is within  $\pm 10\%$  of the overall isokinetic sampling rate, as calculated in Method 5, 5B or Method 17 of 40 CFR, Part 60, Appendix A [as of July 1, 1994]; whichever is applicable;

7.6.d. the stack gas components data is determined as prescribed by Methods 3 and 4 of 40 CFR, Part 60, Appendix A, [as of July 1, 1994];

7.6.e. the other provisions of this Appendix are met and sufficient heat input and fuel quality data is provided to verify that the requirements of Section 8 are met; and

7.6.f. sufficient data and commentary is provided with the submitted test report forms to allow the Director or his designee to evaluate the reported test results and the conditions under which they were obtained.

## Section 8. Heat Input Data Measurements.

### 8.1. General.

8.1.a. The data measurements required to determine the total heat input to the fuel burning unit(s) vented by the test stack during the test run period depends on the computational method applicable.

This Appendix prescribes three (3) computational methods:

- Method 1H - Fuel Use Basis
- Method 2H - Steam Balance Basis
- Method 3H - Flue Gas Analysis Basis

The test supervisor is to submit data on the heat input(s) based on the Fuel Use Basis (Method 1H) whenever coal scales or other fuel meters, as appropriate, are available.

If the appropriate fuel metering device(s) are not available, Method 2H -Steam Balance Basis is to be used.

For all test runs also submit data on the heat input(s) based on Method 3H - Flue Gas Analysis

Basis, in addition to the data required by Method 1H or 2H, whichever is applicable.

8.1.b. The following Sub-Sections detail the specific data required for each method and the means of obtaining these data.

## 8.2. Fuel Use Method (1H).

8.2.a. This computational method requires:

a.1. The measured amount of all fuel(s) fired in the fuel burning units during each test run period, as determined by continuous coal scales or equivalent and/or oil flow and/or gas meter(s). When gas is fired, the temperature and pressure of the gas meter(s) are needed.

a.2. The average moisture, ash, sulfur, volatile matter, and Btu value(s) of fuels fired in the fuel burning units during the test run period is to be determined and reported as follows:

### 2.A. For coal:

A.1. Obtain a representative sample of the coal fired in each fuel burning unit during the test run period. This sample is to be obtained in accordance with the Commercial Sampling Procedure of ASTM: Method D 2234-76 or its latest revision. Consult this ASTM standard for details of the required procedures. Sampling and analysis of coal entering bunkers or silos feeding the fuel burning unit to be tested is also acceptable provided that ASTM requirements are met and that such sampling/analysis properly represents the quality of the coal burned during the test periods.

A.2. Prepare the reduced gross sample, obtained above, for laboratory analysis in accordance with ASTM: Method D 2013-72, "Preparing Coal Samples for Analysis" or its later revision. Consult this ASTM standard for details of the required procedure. In this ASTM method, further amplification is given to the methods of reducing the gross sample to a laboratory sample and preparing the laboratory analysis. The laboratory sample is so prepared that 100% of the coal sample shall pass through a No. 60 (250 micron) sieve. The

final product is thoroughly mixed prior to extracting analytical samples.

A.3. Extract an analytical sample from the laboratory sample and determine the moisture, ash, and volatile matter content of this sample in accordance with ASTM Method D 3173-73 or ASTM Method D 2961-87 (Moisture), ASTM D 3174-82 (Ash), and ASTM D 3175-82 (Volatile Matter) or their latest revisions. Consult these ASTM standards for details of the required procedures. In these ASTM methods, procedures are prescribed for determining the moisture, ash, and volatile content of the sample.

A.4. Extract another analytical sample from the laboratory sample and determine the Btu content of the sample in accordance with ASTM: Method D 2015-77 "Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter" or its latest revision. Consult this ASTM standard for details of the required procedure.

A.5. Extract another analytical sample from the laboratory sample and determine total sulfur content of the sample in accordance with ASTM Method D 3177-75 "Test for Total Sulfur in the Analysis Sample of Coal and Coke" or ASTM Method D 4239-85 or their latest revisions. Consult these ASTM standards for details of the required procedures.

A.6. Send a sealed and marked one pint sample of the laboratory sample representative of the gross sample, to the Director with the test report. If drying was used in reducing the gross sample to the laboratory sample, indicate the percent loss of moisture during this process. For each container provide the test identification number assigned by the West Virginia Division of Environmental Protection in accordance with Sub-Section 7.2.b of this Appendix and the test run number.

### 2.B. For Fuel Oils:

Determine the supplier's name and address, and the specifications for the oil supplied. Use the supplier's specifications when available for



the ash content and Btu value of the oil. When such specifications are not available, determine the grade of oil fired, by referring to any Standard Engineering Handbook. As such the Handbook and appropriate edition should be properly identified, for inclusion as part of any results submitted to the agency for the ash, sulfur and Btu values. Send an eight ounce, sealed and marked, sample of the oil fired during the test to the Director with the test report.

## 2.C. For Natural Gas:

Determine the supplier's name and address, and the specification of the natural gas supplied. Use the supplier's specification for the Btu value of the fuel. Ash may be considered negligible.

## 2.D. Other Fuels:

Determine the name and address of the supplier(s) or producer(s) of any other materials fired during the test run period. Determine the source(s) of the fuel(s). Use the supplier(s)/producer(s)' specifications for the ash, sulfur, and Btu value. When such specifications are not available, resolve with the Director or his designee, the method which shall be used to determine these values, prior to conducting the test. Submit an appropriate small sample of the fuel fired, if other than a gas, to the Director in a sealed and marked sample container.

## 8.3. Steam Balance Method (2H).

This method requires a materials balance and inlet and outlet water/steam or other media pressure and temperature data during the test run period, for the boiler(s) of the fuel burning unit(s) vented by the test stack.

8.3.a. Measure the mass flow rate of all water/steam or other media flowing through each boiler, including blowdown.

8.3.b. Measure the inlet and outlet pressure and temperature of each water/steam circuit, including blowdown.

8.3.c. Construct a flow diagram of the water/steam or other media flow circuit(s) on Form THI-II (2H). Record the measured data on this form, indicating the data points on the diagram.

8.3.d. Determine the boiler manufacturer's name and address, and the boiler type and model number. From the manufacturer's specification, determine the boiler(s) thermal efficiencies. If such specifications are not available, describe in detail the basis and method of selecting the value used.

## 8.4. Flue Gas Analysis Method (3H).

8.4.a. This method involves determining the heat input for the boiler(s) of the fuel burning unit(s) vented by the test stack utilizing:

a.1. appropriate F-factors as contained in 40 CFR, Part 60, Subpart D [as of July 1, 1994]; and

a.2. total volume of stack gas discharged through the stack during the test run; and

a.3. the average excess air discharged [ $O_2\%$  or  $CO_2\%$ ] through the test stack during the test run period.

8.4.b. Appropriate F-factors are to be obtained from 40 CFR, Part 60, Subpart D [as of July 1, 1994], unless carbon content of fly ash or bottom ash exceeds five (5) percent on a per weight basis. In these cases, consult the Director or his designee prior to conducting the test to determine and resolve a suitable F-factor adjustment.

## 8.4.c. Total Volume of Stack Gas.

The total volume of stack gas is determined from:

c.1. volume meter readings obtained during subject test run and recorded on Form TD: Test Run Data Sheet for each test run.

## 8.4.d. Stack Excess Air.

d.1. For low nitrogen content fuel(s) (coal, fuel oil, natural gas), the stack excess air can be computed from the data obtained from the Orsat analysis and recorded on Form TOA - Laboratory Data Sheet (Orsat) for each test run. If blast furnace gas, producer gas, or other fuel(s) of high nitrogen content are used, consult the Director or his designee prior to conducting the test to determine and resolve a suitable method of determining the excess air when such fuel(s) is burned.

## Section 9. Computations and Data Analysis.

This section prescribes the computational method to be used in computing the particulate matter stack emission rate for the test and evaluating the supporting test data. Perform the computations and analysis prescribed in this section for the data obtained from each test run which is to be part of the submitted test results. Record the measured data and the appropriate computations on the designated test report forms, a copy of which is in the Appendix which may be obtained from the Director upon request. Submit sufficient commentary with the test report data to fully describe the conditions under which the data was obtained and any factors which might affect the evaluation of the test results.

9.1. Particulate Matter Sample Weight Determination. (Form TLP - Laboratory Data Sheet (Particulate)).

$M_f$  = particulate matter (grams) collected by the primary filter, including andy prefilter if used

$M_a$  = particulate matter (grams) obtained from the evaporation of the acetone washings of the internal sampling train surfaces exposed to the particulate sample prior to the primary filter

$A_b$  = particulate matter residue (grams) in the volume ( $V_a$ ) of acetone wash used for  $M_a$  above, as determined by the acetone blank analysis [i.e.,  $A_b = (S_d)(V_a)$ ; where  $S_d$  equals the residue found in the acetone blank analysis in gm/ml, and  $V_a$  equals the volume of acetone used in the acetone wash for  $M_a$  above]

$M_n = M_f + M_a - A_b$  = the indicated weight of particulate matter collected, in grams

9.2. Moisture Determination. (Form TLH: Laboratory Data Sheet - Moisture; Forms TD; Test Run Data Sheet).

Record all measured and calculated data on the appropriate forms. Compute and record the following:

$V_m$  = ( $\text{ft}^3$ ) the sum of all  $\Delta\text{DGR}$  for the run, where  $\Delta\text{DGR}$  is equal to the indicated amount of gas sampled at each point during the extraction interval

$T_m$  = ( $^{\circ}\text{F}$ ) average temperature of the dry gas meter during the test run.  $T_m$  = average dry gas meter temperatures ( $^{\circ}\text{F}$ ) at each sampling point.

$P_m$  = (in. Hg) average absolute pressure at the dry gas meter during the test run.  $P_m$  = the average absolute pressure at the dry gas meter for each sample point, where  $P_m = P_b - V_{ac}$ ;  $P_b$  = barometric pressure,  $V_{ac}$  = meter vacuum.

$W_c$  = amount of water collected in condenser or impingers (grams)

$W_d$  = amount of water collected by the drying agent used after the condenser or impingers (grams)

$W = W_c + W_d$  (grams)

$B$  = percent moisture in the sampled gas by volume on a wet basis, divided by 100

$$B = W / \left( \left( \frac{374 \overline{P_m} V_m}{\overline{T_m} + 460} \right) + W \right)$$

$w$  = moisture correction factor; ratio of the volume of wet sample gas to the volume of dry sample gas

$$W = 1 / (1 - B)$$

9.3. Sample Gas Density and Excess Air Determination. (Form TOA - Laboratory Data Sheet (Orsat)).

9.3.a. Gas Density.

a.1. Record the Orsat analysis for all three runs on Form TOA (Laboratory Data Sheet) on lines 1 through 9. Compute and record the average value of CO<sub>2</sub>, O<sub>2</sub>, CO and N<sub>2</sub> for each run on line 10 or the value of these components of the composite sample, if obtained (optional), on line 11.

a.2. Transcribe the values of w (moisture correction factor) from Form TLH to Form TOA in blocks 12 for each run. Transcribe the values of B, the percent water (wet basis) from Form TLH to Form TOA in column 13, line 14, for each run.

a.3. Correct the average component volumetric percentages, dry basis (line 10), to volumetric fractions (wet basis), by dividing by 100w and enter these values on line 14 for each test run.

a.4. Multiply each of these volumetric fractions (wet basis - line 14) by the corresponding molecular weights on line 15 and enter the values on line 16.

a.5. Enter the sum of the values on line 16 for each run in the appropriate box on line 17, the apparent molecular weight of the wet gas (Mg).

a.6. Determine the wet gas density for each run by dividing the molecular weight for the run (on line 17) by the number 29 and enter this quotient in the appropriate box on line 18.

9.3.b. Excess Air.

Compute and record the excess air fraction for each run using the average dry gas analysis from line 10 and the formula shown on line 20. Record excess air fraction (EA) in the appropriate box on line 19.

Note: The excess air fraction equation present on line 20 of Form TOA is not applicable

when producer gas, blast furnace gas or other fuels high in nitrogen content are used.

9.4. Actual Sample Gas Volume Determination. (Form TD: Test Run Data Sheet).

9.4.a. For each point sampled during the run compute the actual volume drawn through the sampling nozzle adjusted to standard conditions of 68 °F and 29.92 inches of Hg as indicated below:

qm = Actual sample volume (in cubic feet) drawn through the sampling nozzle for each sampled point adjusted to 68 °F and 29.92 inches of Hg.

$$qm = (\Delta DGR) (w) \cdot \frac{528}{(Tm + 460)} \cdot \frac{Pm}{29.92}$$

WHERE,

ΔDGR, w, Tm, and Pm are defined in Sub-Section 9.2 of this Section and are recorded on Form TD.

9.4.b. Record the computed values of qm for each sampled point on the appropriate line of the column labeled qm on Form TD. Sum the values of qm for all points included in the run and enter this value (Qm) in the block so labeled.

9.5. Isokinetic Sample Volume Determination. (Form TD: Test Run Data Sheet).

9.5.a. For each point samples during the run, compute the volume of sample gas (adjusted to 68 °F and 29.92 inches of Hg) that would have been drawn through the sampling nozzle if isokinetic conditions were maintained, as indicated below:

qo = Isokinetic sample volume, the volume of sampled gas (in cubic feet) for each sampled point, if isokinetic conditions were maintained, adjusted to standard conditions of 68 °F and 29.92 inches of Hg. For conditions where static pressure in the duct or stack being tested is more than 20 in. H<sub>2</sub>O, consult with Director or his designee.

$$q_o = 60 (528) (F_p) (A_n) \cdot \left( \frac{\Delta H}{T_s + 460} \right)^{.5} \cdot \Delta t$$

WHERE,

$F_p$  = combined correction factor for units and Pitot tube deviation:

Standard tube = 2.90 (units) x 1.00 (deviation) = 2.90

Type S tube = 2.90 (units) x 0.83\*(deviation) = 2.41

\*Note: The deviation for the Type S tube may vary for different sampling configurations and should be determined by calibration against a standard pitot tube for each Pitobe arrangement per Method 2 of 40 CFR, Part 60, Appendix A [as of July 1, 1994].

$A_n$  = the cross-sectional area of the sampling nozzle in (ft<sup>2</sup>)

$\Delta H$  = Pitot tube differential reading\*\* in inches of H<sub>2</sub>

\*\*Note: If the particular pitot tube differential indicator used is calibrated to give a reading of the square root of  $\Delta H$  ( $\sqrt{\Delta H}$ ), change the heading of the " $\Delta H$ " column on Form TD to  $\sqrt{\Delta H}$  and modify your computations for  $q_o$  as appropriate.

$T_s$  = Average stack gas temperature (in °F) at each sampled point during the extraction time at that point.

$\Delta t$  = elapsed time at each sampling point (minutes)

9.5.b. Record the computed values of  $q_o$  for each sampled point on the appropriate line of the column labeled  $q_o$  on Form TD. Sum the values of  $q_o$  for all points included in the run and enter this value ( $Q_o$ ) in the block so designated.

9.6. Fractional Isokinetic Rate Determination. (Form TD: Test Run Data Sheet).

9.6.a. For each point sampled during the run, compute the point isokinetic factor (ISKp), which indicates the average degree of deviation from isokinetic conditions during the sampling (extraction) time at that point. ISKp is computed as follows:

ISKp = the point isokinetic factor, the ratio of the actual sample volume to the isokinetic sample volume, both volumes adjusted to standard conditions of 68 °F and 29.92 inches of Hg

$$ISKp = \left( \frac{qm}{q_o} \right)$$

WHERE,

$qm$  is defined in Sub-Section 9.4 and  $q_o$  is defined in Sub-Section 9.5 of this Appendix, both values are recorded for each point on Form TD.

9.6.b. Record the computed value of ISKp for each sampled point on the appropriate line of the column labeled ISKp on Form TD. The value of ISKp for each sampled point should not vary greatly from the overall isokinetic factor (ISKo).

9.6.c. For each run, compute the overall isokinetic factor (ISKo), which indicates the overall degree of deviation from isokinetic conditions during the run, and which is used in the weight emission rate computations of the next section. ISKo is computed as follows:

ISKo = the overall isokinetic factor, the ratio of the total actual sample volume to the total isokinetic sample volume, both volumes adjusted to standard conditions of 68 °F and 29.92 inches of Hg.

$$ISKo = \left( \frac{Qm}{Q_o} \right)$$

WHERE,

$Q_m$  is defined in Sub-Section 9.4 and  $Q_o$  is defined in Sub-Section 9.5 of this Appendix, both values are recorded for each run on Form TD.

9.6.d. Record the computed value of  $ISK_o$  for each run in the block so designated on Form TD. If the value of  $ISK_o$  is outside the range of 0.9 to 1.10, reject the run result.

9.6.e. Compute the value %ISK as follows: retain the sign and record on Form TR-II: Summary of Test Run Results.

$$\%ISK = 100 (ISK_o - 1)$$

9.7. Particulate Matter Emission Rate Determination. (Form TD: Test Run Data Sheet, Form TR-II: Summary of Test Run Results).

The particulate matter emission rate for each run is computed from the following equation:

$$M(P)n = \frac{Mn}{C} \cdot \frac{As}{An} \cdot \frac{60}{\Theta} \cdot \frac{1}{ISK_o}$$

WHERE,

$M(P)n$  = the particulate matter emission rate (in pounds per hour) for the test run

$Mn$  =  $M_f + M_a - A_b$  indicated weight of particulate matter (in grams) collected by the sampling train.

$C$  = 453.592 grams/pound

$As$  = the cross-sectional area of the sampling plane ( $ft^2$ )

$An$  = the cross-sectional area of the sampling nozzle ( $ft^2$ )

$60$  = 60 minutes per hour

$\Theta$  = the sum of all extraction times at all points sampled per run (the sum of  $\Delta t$ 's). The

total sampling time, not including movement time from port to port.

$ISK_o = Q_m/Q_o$  = the overall isokinetic factor for the run. The ratio of total actual volume sampled to the total isokinetic volume, both values adjusted to 68 °F and 29.92 inches of Hg on a wet basis.

The values of  $Mn$ ,  $As$ ,  $An$ ,  $\Theta$  and  $ISK_o$  for each run are recorded on Form TD: Test Run Data Sheet.

Record the value of  $M(P)n$  for each test run on Form TR-II: Summary of Test Run Results.

9.8. If more than one sampling plane was required to evaluate the total stack emission rate, perform the computation specified in 9.7 of this Appendix for each sampling plane, then sum the values of  $M(P)n$  for all sampling planes used. Record the total emission rate for each run (all sampling planes) on Form TR-II as above, then compute the average stack emission rate for the test. Note the number and designations of the sampling planes used under comments. If more than one sampling train was used simultaneously to sample the required number of sampling points at one sampling plane, the values of  $Mn$ ,  $Q_m$ , and  $Q_o$  are the sum total values for all the sampling trains used for the one sampling plane.

9.9. Heat Input Determinations. (Forms THI-II: Heat Input Data Sheets: Form TOA; Laboratory Data Sheet (Orsat); Form TR-II: Summary of Test Run Results).

9.9.a. This Sub-Section prescribes three (3) methods of computing the total heat input to the (similar) fuel burning unit(s) vented by the test stack:

Method 1H - Fuel Use Basis

Method 2H - Steam Balance Basis

Method 3H - Flue Gas Analysis

Basis

Submit data and computations on the appropriate forms.

9.9.b. Summarize the results of the selected computational methods on Form TR-II: Summary of Test Run Results for each run. Record the type units tested (see definitions for type), the total number of similar units associated with the test run results, the two values of the total heat input for all the units associated with the test run results, as computed by the two selected methods, the total design heat input and the total maximum normal operating load for the units associated with the test result (see definitions for the heat input terms).

#### 9.10. Method 1H - Fuel Use Basis.

9.10.a. From the data obtained in accordance with Sub-Section 8.2, Heat Input Data Measurements, compute the heat input for each fuel burning unit for which this method is to be used, as follows:

$$HI = \frac{60}{\Theta} \sum_{i=1}^n \frac{(Fi \times HVi)}{10^6}$$

WHERE,

HI = Heat input per fuel burning unit(s) in  $10^6$  Btu per hour

Fi = The quantity of each fuel fired in this fuel burning unit during the total test run period ( $\Theta$ ) in appropriate dimension units (e.g., pounds, gallons, SMCF)

HVi = The average Btu value of each fuel used, in appropriate dimensional units related to the Fi units (e.g., Btu/lb, Btu/gal, Btu/SMCF), on an as fired basis

$\Theta$  = The total test run period in minutes. The sum of all extraction intervals ( $\Delta t$ )

n = The number of different fuels fired in the fuel burning unit during the test run period

NOTE = When more than one fuel burning unit is vented by the test stack, sum the individual heat input values for all units of the same

type vented by the test stack to obtain the total heat input for the test.

9.10.b. Record the values used in the computations, and the results on Form THI-II (1H)

#### 9.11. Method 2H - Steam Balance Basis.

9.11.a. From the data obtained in accordance with Sub-Section 8.3 of this Appendix, compute the heat input for each fuel burning unit for which this method is to be used, as follows:

$$HI = \frac{mf(ho - hi) + Mbd(hbd)}{10^4 (BE)}$$

WHERE,

HI = Heat input per fuel burning unit in  $10^6$  Btu per hour

ho = Average enthalpy of steam/water or other media leaving the boiler of the fuel burning unit in Btu/lbm

hi = Average enthalpy of steam/water or other media entering the boiler of the fuel burning unit in Btu/lb

mf = Average mass flow rate of steam/water or other media through the boiler in lbm/hour

Mbd = Average mass flow rate of blowdown in lbm/hour

hbd = Average enthalpy of steam/water or other media leaving the boiler as blowdown in Btu/lbm

BE = The boiler thermal efficiency (percent)

NOTE: The enthalpy values for the above equation can be determined from the inlet and outlet temperatures and pressures of the steam/water or

other media flowing through the boiler using appropriate steam tables.

9.11.b. Record the steam flow, temperatures, pressures, and enthalpy values on the steam/water or other media circuit flow diagram required on Form THI-II (2H). Also record the necessary calculations and results on Form THI-II (2H) or attached sheet(s). Sum the heat input values of all fuel burning units of the same type vented by the test stack.

#### 9.12. Method 3H - Flue Gas Analysis Basis:

9.12.a. From data obtained in accordance with Sub-Section 8.4 of this Appendix, compute the heat input for each fuel burning unit for which this method is to be used, as follows:

$$HI = \frac{Vmstd \cdot \frac{As}{An} \cdot \frac{20.9 - \%O_2}{20.9}}{F\text{-factor} \cdot \frac{\Theta}{60}}$$

WHERE,

HI = Heat input per fuel burning unit  
in  $10^6$  Btu per hour

Vmstd = Volume of gas sample  
measured by the dry gas meter during run corrected  
to standard conditions of 68 °F and 29.92 inches  
Hg.

As = Cross-sectional area of the  
sampling plane (ft<sup>2</sup>)

An = Cross-sectional area of the  
sampling nozzle (ft<sup>2</sup>)

%O<sub>2</sub> = Percent oxygen content by  
volume as taken from Orsat analysis on Form TOA

F-factor = a factor representing a ration  
of the dry flue gases generated to the calorific value  
of the fuel combusted (dscf/10<sup>6</sup> Btu), See 40 CFR,  
Part 60, Subpart D

Θ = Sum of all extraction time at all  
points sampled per run (minutes)

9.12.b. Record Vmstd, %O<sub>2</sub>, F-factor, and Θ  
on Form THI-II (3H). Record calculations.

BEFORE THE WEST VIRGINIA DIVISION OF  
ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

**ORIGINAL**

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 2 "To Prevent and Control Particulate  
Air Pollution from Combustion of Fuel  
in Indirect Heat Exchangers."

Transcript of proceedings had at a public hearing in the above-styled matter for the West Virginia Division of Environmental Protection, Office of Air Quality at the Conference Room, 1558 Washington Street, East, Charleston, West Virginia, 25305, commencing at 6:10 p.m. on the 19th day of July 1999, pursuant to notice.





1                                    P R O C E E D I N G S

2            MS. CHANDLER:    Good evening.    This public hearing  
3            will now come to order on this 19th day of July, 1999 at  
4            the West Virginia Division of Environmental Protection,  
5            Office of Air Quality's Conference Room located at 1558  
6            Washington Street, East, Charleston, West Virginia.

7            The purpose of the public hearing is to receive  
8            comments on the proposed rules filed in the Secretary of  
9            State's Office on June 16, 1999 and noticed in the State  
10           Register on June 18, 1999.    The proposed legislative rules  
11           are 45 CSR 1, 45 CSR 2, 45 CSR 3, 45 CSR 4, 45 CSR 5, 45  
12           CSR 6, 45 CSR 7, 45 CSR 10, 45 CSR 12, 45 CSR 16, 45 CSR  
13           17, 45 CSR 18, 45 CSR 23, 45 CSR 25, 45 CSR 33 and 45 CSR  
14           34.    The rules were noticed in a Class I legal  
15           advertisement in both The Charleston Daily Mail and The  
16           Charleston Gazette, and notice was also sent to various  
17           individuals and organizations.

18           This public hearing is being held pursuant to the  
19           provisions of 29A of the West Virginia Code and Section  
20           110 of the Clean Air Act.

21           My name is Jeanne Chandler of the Public Information  
22           Office of the West Virginia Division of Environmental  
23           Protection.    I will be the moderator for these  
24           proceedings.

1           In order to obtain separate transcripts for each of  
2           the rules, the hearing procedure this evening will be to  
3           introduce each rule individually, allow time for oral  
4           comment and close the hearing for that particular rule.  
5           Written comments for any rule may be submitted at the end  
6           of this public hearing tonight. For those of you wishing  
7           to make oral comments, a sign-up sheet was provided and  
8           sign up now if you haven't already done so. Please limit  
9           your comments to five minutes. The comment period has  
10          been extended until July 28th until 5:00 p.m. Written  
11          comments may be sent to the attention of Edward L. Kropp,  
12          Chief, Office of Air Quality, 1558 Washington Street,  
13          East, Charleston, 25311. Comments will not be accepted by  
14          e-mail. Your comments will be made a part of the rule-  
15          making record.

16          The court reporter is Ms. Paula J. Moore. She's with  
17          Q & A Court Reporters, Incorporated. If anyone desires a  
18          transcript of this proceeding, please contact Ms. Moore at  
19          937-2555.

20          The purpose of this public hearing is to accept  
21          comments on 45 CSR 2, "To Prevent and Control Particulate  
22          Air Pollution from Combustion of Fuel in Indirect Heat  
23          Exchangers." The purpose of the rule is to establish  
24          particulate matter weight and visible emissions standards

1 for fuel burning indirect heat exchangers in West  
2 Virginia. The rule also establishes monitoring, record  
3 keeping and reporting requirements for the owner/operators  
4 of fuel burning indirect heat exchangers.

5 The revisions to 45 CSR 2 contained herein are  
6 intended to: update definitions; clarify and streamline  
7 the opacity standards for visible emission for the soot-  
8 blowing exemption; streamline the monitoring, record  
9 keeping and reporting requirements; and eliminate  
10 unnecessary monitoring, record keeping and reporting  
11 requirements. Other provisions are intended to harmonize  
12 this rule with other rules of the Office of Air Quality  
13 rules for fuel burning units.

14 45 CSR 2 is part of the West Virginia State  
15 Implementation Plan approved by the U.S. Environmental  
16 Protection Agency to assure attainment and maintenance of  
17 attainment with the National Ambient Air Quality Standards  
18 for particulate matter. The revisions proposed herein  
19 were initiated by the Office of Air Quality as part of a  
20 broad effort to modernize and streamline all of the Office  
21 rules. The current revision process is also intended to  
22 update and harmonize this rule with other rules of the  
23 Office of Air Quality.

24 The proposed revisions are the result of a thorough

1 review in a stakeholder process that was inclusive of the  
2 Office of Air Quality, representatives of the regulated  
3 community, concerned citizens and the environmental  
4 community.

5 Upon authorization and promulgation of revisions to  
6 45 CSR 2, the Office of Air Quality will seek federal  
7 approval of the rule change by the U.S. Environmental  
8 Protection Agency for inclusion in the State  
9 Implementation Plan for the Federal Clean Air Act.

10 The floor is now open for public comment. Again,  
11 please identify yourself and any affiliation prior to  
12 making comments. (No response.) There being nothing  
13 further, this public hearing for 45 CSR 2 is concluded.

14 (WHEREUPON, the public hearing was  
15 concluded at 6:12 p.m.)

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

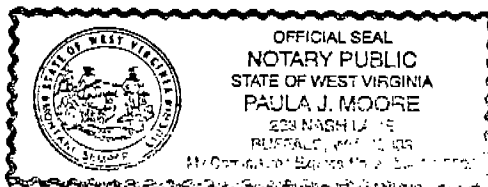
I, the undersigned, Paula J. Moore, a Certified Court Reporter and Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter.

Given under my hand and official seal this 27th day of July 1999.

*Paula J. Moore*

Certified Court Reporter  
Notary Public

My commission expires November 12, 2006.



45CSL2

# Division of Environmental Protection

6:00 PM

Public Hearing: OAQ legislative Rules - 2000 Session

Time/Date: July 19, 1999

COMMENT  
YES NO

NAME	ADDRESS	YES	NO
1. Gari Grapp Lewis - Lwl	9408 Venable Ave SE		
2. Tom O'Connell	HC 80 Bayview Garden WV		
3. Bill Hoyer	AC 65 Box 42-A Lookout WV		
4. Fred Durham	1615 Washington St East		✓
5. Ken Ward	Charleston Gazette 1001 Virginia St, E, City		✓
6. Dan Miller	WVMD 1624 KANAWHA BLVD A, CHARLESTON, WV 25301		
7. Laura Cauder	WV DEP CAFE 1555 Washington St E (Charleston, WV)		✓
8. Earl Dugglesley	"		✓
9. Jesse Atkins	"		✓
10. Robert Keadley	"		✓
11. Karen Watson	" 1615 Washington St. E, Charleston		✓
12. James Kotson	412 TYKONE-AVEAY ROAD, MORGANTOWN, WV 26505	✓	
13. Gerald Bollier	PO Box 68 Washington, WV 26180 GE Plastics		✓
14. Sam Nixon	WV DEP EAD 10 MacJunkin Rd, N. to 25143		
15. Tony Bennett	WV DEP OAC CHARLESTON		✓

45CSR2

# Division of Environmental Protection

6:00 pm

Public Hearing: OAQ Legislative Rules - 2000 Session

Time/Date: July 19, 1999

COMMENT  
YES NO

NAME	ADDRESS	YES	NO
1. <u>Jim McElroy</u>	<u>Box 144 Crapley, WV 24931</u>		
2. <u>Joseph Robert</u>	<u>Box 66 Clarksburg WV 24931</u>		
3. <u>Richard</u>	<u>PO Box 190 Clarksburg, WV 26302</u>		X
4. <u>Kathy G. Beckett</u>	<u>PO Box 553 Charleston, WV 25322</u>	X	
5. <u>Tim Mallon</u>	<u>301 Virginia St. E. Charleston, WV 25327</u>	X	
6. <u>Steve P.</u>	<u>WV 26201</u>		X
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

4406 Venable Ave SE  
Charleston, WV 25304  
July 28, 1999

Edward L. Kropp  
Chief, Office of Air Quality  
West Virginia Division of Environmental Protection  
1558 Washington Street East  
Charleston, West Virginia 25311

Dear Mr. Kropp;

The following comments are in regard to the package of air quality proposed rules. While I represented the League of Women Voters in the stakeholder process, they are not the final or official word of the League, but are my own.

Having read all the proposed rules in one sitting, I am struck first by the amount of discretion given to the Director. I recognize that discretion and judgement are necessary to the effective enforcement of air quality regulations, but in 45CSR 3, section 5.4, the director has discretion to revoke the operating permit of a hot mix asphalt plant that did not maintain the requirements of the rule. Since the requirements are basic--no particulates beyond a certain standard, I believe that the rule should read, "shall revoke, unless good cause is shown by the permittee". Similar language should be used in the equivalent sections throughout this regulatory package. Giving wide latitude to the Director could provide a legal defense to favoritism, should a Director be so inclined.

I am similarly concerned about the lack of deadlines throughout the proposed rules. While it is clearly inappropriate to delineate rigid timelines, it is appropriate to expect that the agency will act expeditiously in its contacts with the regulated community and the public. It would strengthen the rules if such language was placed throughout the rules package where appropriate.

The process used by the Office of Air Quality in revising the rules is excellent. Bringing together the stakeholders to work together, and come to a common understanding, is a process that should be duplicated, not only within the Divisions of Environmental Protection, but throughout state government. I hope that as additional air quality rules are revised that the same process will be used. The rules are indeed improved by this process. I do support the proposed rule revisions and trust that they will be approved by both the Legislature and the EPA.

Thank you for making it possible for me and other citizens to participate in this important project. Inclusiveness made for a better product than earlier rule writing procedures.

Sincerely

  
Conni Gratz Lewis



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029



Mr. Edward L. Kropp, Chief  
Office of Air Quality  
West Virginia Division of Environmental Protection  
1558 Washington Street, East  
Charleston, West Virginia 25311

July 1, 1999

Dear Skipp:

On June 28, 1999, we received your Notice of Public Hearing and Public Comment Period as well as copies of the proposed revisions to 16 rules which your office is proposing to adopt, effective the spring of 2000. Of these 16 proposed rules, we have determined that 14 of them may be impacted by current federal requirements. Therefore, we wish to review these proposed rules and provide your agency with any comments we may have for the public record. This allows your agency to make any agreed upon revisions to the proposed rules pursuant to our comments prior to their formal adoption. This would pave the way for expeditious approvals of these revised rules by EPA at the time of formal submittal.

However, given that we would have had only 14 working days until your scheduled date to close the public record, our office will not have time to perform the comprehensive review we normally provide to your agency. Therefore, I am requesting an extension of the date by which comments may be entered into the public record. If you could provide a 30-day extension we would be most appreciative, however, even a 15-day extension would be helpful. EPA would much prefer to identify any concerns we might have to your office while the State regulations are at the proposal stage, and work with you to resolve these concerns before West Virginia formally adopts and submits these regulations for federal approval.

I know you share my belief that our agencies should work together to avoid disapprovals and the uncertainties they pose to the regulated community and the public. Please let us know your decision as soon as possible by having your staff contact Harold Frankford at 215 814-2108.

Sincerely,

Marcia L. Spink, Associate Director  
Office of Air Programs  
Air Protection Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.  
Region III  
1630 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Date: 7/1/99	
To	Skip Kropp
Office	West Virginia DEQ, Office of Air Quality
Phone Number	304/558-2496
Fax Number	304/558-3287
Subject	Request for Extension of Time to Submit Comments
From	Marcia L Spink EPA PHONE: (215) 814-2104 FAX: (215) 814-2124
NUMBER OF PAGES INCLUDING COVER SHEET <u>2</u>	
ORIGINAL TO BE SENT: Yes _____ No _____	
MESSAGE: Request for extension of time to submit comments on West Virginia proposed air quality rules. _____ _____ _____ _____	

*Handwritten: Karen, Ed, Bill, M, Winton*  
**JACKSON & KELLY PLLC**

ATTORNEYS AT LAW

1600 LAIDLEY TOWER

P. O. BOX 553

CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000

TELECOPIER 304-340-1130

<http://www.jacksonkelly.com>

(304) 340-1019

[kbeckett@jacksonkelly.com](mailto:kbeckett@jacksonkelly.com)

July 27, 1999

1144 MARKET STREET  
WHEELING WEST VIRGINIA 26003  
TELEPHONE 304-233-4000

1660 LINCOLN STREET  
DENVER COLORADO 80264  
TELEPHONE 303-390-0003

175 EAST MAIN STREET  
LEXINGTON KENTUCKY 40595  
TELEPHONE 506-255-9500

2401 PENNSYLVANIA AVENUE N.W.  
WASHINGTON D.C. 20037  
TELEPHONE 202-973-0200

MEMBER OF LEA MUNDI  
THE WORLD'S LEADING ASSOCIATION  
OF INDEPENDENT LAW FIRMS

300 FOXCROFT AVENUE  
MARTINSBURG WEST VIRGINIA 25401  
TELEPHONE 304-263-8800

256 RUSSELL AVENUE  
NEW MARTINSVILLE WEST VIRGINIA 26155  
TELEPHONE 304-455-1751

6000 HAMPTON CENTER  
MORGANTOWN, WEST VIRGINIA 26505  
TELEPHONE 304-599-3000

412 MARKET STREET  
PARKERSBURG WEST VIRGINIA 26101  
TELEPHONE 304-424-3490

1000 TECHNOLOGY DRIVE  
FAIRMONT, WEST VIRGINIA 26554  
TELEPHONE 304-368-2000

Edward L. Kropp, Chief  
Office of Air Quality  
WV Division of Environmental Protection  
1558 Washington Street, East  
Charleston, West Virginia 25311

Re: Proposed Modifications to 45 CSR  
1,2,3,4,5,6,7,10,16, 17, 18, 23, 25, 33, and  
34.

Dear Chief Kropp:

The West Virginia Chamber of Commerce ("Chamber") was a faithful participant in the Office of Air Quality ("OAQ") convened Stakeholder Regulatory Review Workgroup. From those meetings came a number of recommendations and suggestions that were presented to the OAQ for consideration in proposing revision to the West Virginia air quality regulatory program. The Chamber extends its compliments to the OAQ staff for the long hours it committed to this effort. The Chamber is supportive of the review process as a forum available to everyone to listen, learn, and draft proposed state air policy. The open exchange of concerns, ideas, and recommendations has resulted in a proposal package the genesis of which the participants can clearly understand. In some instances compromise was required. The Chamber supports this package of regulatory revisions in the spirit of compromise. These recommended proposals, as a whole, are appropriate and result in improvement in the state air quality program.

The following detailed comments are provided on behalf of the West Virginia Chamber of Commerce.

#### 45 CSR 2 - Particulate Emissions from Boilers

Section 3 Visible Emission Standards - The Chamber had urged consideration of modifications to the criteria for allowing an alternative visible emission standard. The Chamber supports the inclusion of the modifications to the regulation to make it more consistent with the six minute averaging of the rule and to meet the needs of the regulated community, without compromising the ultimate ambient air quality for particulates.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools, to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 2, the Chamber supports the regulatory revisions.

Section 8.4 addresses the potential need for the development of alternatives to the testing, monitoring and reporting requirements of the rule. The Chamber is supportive of the inclusion of this concept. The OAQ proposes to recognize unique operational characteristics that either make the implementation of Regulation 2, Section 8 impossible or unreasonable. This modification is evidence of the OAQ's commitment to work toward the development of a program that works with the regulated community to assure an effective air quality regulatory requirement. The Chamber applauds these and other similar efforts.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

#### **45 CSR 3 - Hot Mix Asphalt**

Regulation 3 had not undergone review since 1979. Many of the modifications to this regulation have been proposed to update and streamline the rule. The Chamber is supportive of the proposed changes.

Section 3.2 Start-up and Shut-down of Operations - During the Stakeholder Review Process, the Chamber had urged regulatory recognition of shut-down conditions, as has been done under the remainder of the OAQ regulatory program. The OAQ has proposed inclusion thereof. Again, the Chamber applauds the efforts of the OAQ to streamline the regulations and create consistency where possible.

#### **45 CSR 4 - Objectionable Odors**

Regulation 4 is being proposed for significant modification in response to the OAQ's recommendations. The Stakeholder Review Process engaged in lengthy discussions over the concerns of the agency and the problems they wished to see addressed. The Chamber participated in those discussions and is supportive of this ultimate proposal. This rule is new and we will all learn more about its impact on the air quality program as the agency begins to administer it. This proposal is a good first attempt.

Section 2.5 Objectionable Odors - This proposed definition underwent a great deal of discussion during the Stakeholder Review Process. The Chamber is supportive of this definition based upon the representation by the agency that this odor regulation would be implemented based upon a combination of factors (investigations, determinations, and complaints). Recognition of the need for a combination of factors gives the definition of "objectionable odors" the depth it needs to avoid abuse by reported complaints that may or may not be inspired by an environmental condition. The Chamber is supportive of a well designed regulatory program that assures the environmental regulations will not be subject to abuse by parties who may wish to use it to advance alternative political objectives.

Section 4.1 Accidental and Other Infrequent Emissions, Reporting - The Chamber had advanced a concern about the need to create an affirmative obligation for the reporting of accidental or other infrequent emissions that was reasonable. The OAQ's proposal both creates the obligation and clarifies that such a report is due upon the reasonable determination by a person that they are responsible for the objectionable odor. The Chamber is supportive of this language and believes its reasonableness standard complements other more stringent reporting obligations that are truly environmentally-based. The Chamber notes a typographical error where the last line of this regulation should read: "reasonably has knowledge of such discharge."

Section 7 Enforcement - This language is written such that it fails to recognize the notification and investigation process described in Section 3 of this rule. The Chamber is supportive of the need for the OAQ to preserve its authority to exercise its enforcement authorities when the emission of air pollution is causing a violation of the WV Air Pollution Control Act. The Stakeholder Review Process invested significant resources in developing this rule. The Chamber presumes the OAQ intended for this language in Section 7 as a reservation of enforcement authority that would be invoked after reasonable efforts to implement Section 3 had failed.

#### **45 CSR 5 - Coal Preparation Plants, Coal Handling, and Coal Refuse**

This regulation has been expanded to incorporate the current 45 CSR 1 which regulates coal refuse. In the interest of consolidating the air quality regulations that impact the coal industry, it was proposed that its requirements be combined with 45 CSR 5. The Chamber participated in the efforts to combine these regulations and complements the OAQ's efforts to affect this combination as seamlessly as possible. This modification is consistent with the intent and purpose of the Stakeholder Review Process which was to revise and update.

Sections 3.2 and 3.3 Particulate Emission Limits - The OAQ has proposed revision to the opacity limits by offering the statement, during the Stakeholder Review Process, that these revisions were based upon the need to address the calculation of averaging, as opposed to aggregation. The regulatory impact of these changes was not readily apparent to any of the participants in the Review Process, to include the OAQ. It is the understanding of the Chamber that these revisions were not intended to be submitted, since the Stakeholder participants were so unclear as to the impact of the proposed change. The Chamber urges that the regulation be restored to its original language.

Section 10 Reports and Testing - The Chamber supports the proposed modifications to this section to emphasize the EPA test methods used by most operations. The proposal merely updates and refines the regulation without changing its effect.

Section 11 Variance - The proposed modifications to the administrative process of granting a variance were discussed at length during the Stakeholder Review Process. The intent of the modifications was to provide a well defined process for managing equipment failure. The Chamber supports the OAQ's inclusion of these revisions. The suggested modifications will serve to enhance the smooth administration of the variance process that currently exists. Administrative efficiency is an important factor and the Chamber applauds the agency's efforts to incorporate such changes.

#### **45 CSR 6 - Combustion of Refuse**

Section 3.1.c.4 Pre-Approval of Burning - The proposed revisions to Regulation 6 are principally those revisions recommended by the OAQ during the Stakeholder Review Process. Generally, these modifications have been designed to update this regulation. The Chamber is supportive of the proposed changes and further recommends that the agency consider the development of an interpretive rule, or other appropriate administrative tool for implementation, that will provide guidance to the regulated community concerning the new requirement that approval to conduct burning of land clearing debris must be obtained. Consistent with the stated goals of this regulatory review process, clear communication as to what the agency expects of the regulated community will go far to assure smooth implementation of the modified provisions of Section 3.1.c.4.

#### **45 CSR 7 - Particulate Emissions from Manufacturing Processes**

The Stakeholder Review Process devoted significant time to exploring the particulate emissions control program as set forth under Regulation 7. This is a complex rule that attempts to regulate a very diverse universe of manufacturing processes. This fact alone seriously complicates any effort to streamline and clarify its intent. The Chamber extends its compliments to the OAQ staff for its efforts during the Stakeholder discussions to explain the agency's needs with regard to this rule. The Chamber recommends for consideration the future need to review the merit of splitting Regulation 7 into several small regulations that are industry category specific. Such a split would significantly simplify the implementation and compliance with this rule.

Section 2.18 Maintenance Operations - The Chamber had proposed consideration by the Stakeholder Workgroup the need to recognize that certain maintenance operations result in emissions of particles that are not clearly defined under Regulation 7. This lack of clarity had resulted in inconsistent interpretation and enforcement. In response to that request, the OAQ has proposed a definition and a well defined exemption for certain maintenance operations that are not adversely impacting air quality under Section 10.3. The Chamber is supportive of these revisions as resulting in clarification of the regulation. These revisions recognize the fact that certain maintenance operations are insignificant and infrequent sources of particles not warranting extensive regulation, but instead warranting management through good engineering practices.

Section 2.39.d Type 'd' Manufacturing Processes - The Chamber had raise concerns over the need to clarify the scope of those manufacturing processes in which material of any origin undergoes a chemical change. In response to those comments, the OAQ has proposed the phrase "and this chemical change results in the emission of particulate matter to the atmosphere." The Chamber supports this change as one that serves to enhance the implementation of and compliance with this rule.

Section 3.7 Emissions from Storage Structures - The revisions to this section were intended by the Stakeholder Workgroup to be clarifying modifications to the requirement to control emissions from storage structures. The Chamber supports this revision as one that serves to streamline the requirement to control emissions from storage structures.

Section 5 - Control of Fugitive Particulate Matter - It was proposed by the Chamber that it would be appropriate to add language to expand the meaning of a fugitive particulate control system to include process equipment design, control equipment design or operation and maintenance procedures. These are important and effective alternatives that warranted recognition in the regulatory program. The OAQ has proposed inclusion of these alternatives confirming these fugitive control measures. The Chamber supports these modifications as enhancements to the meaning of the rule.

Section 10 - Alternative Visible Emission Standards - The Stakeholder Workgroup engaged in extensive discussions over the need to provide a similar process for demonstrating the need for an alternative visible emission standard for start-up and shutdowns as exists for sources of particles that are regulated from boilers. The results of those discussions are found in the proposed new section 10.4. The Chamber supports these recommended changes that create a process by which a manufacturing source operation is afforded the opportunity of demonstrating the need for an alternative standard that is protective of air quality.

Sections 10.5 and 10.6 Deminimus Sources of Particles - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of particles and mineral acids. Inclusion of these new sections is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 11 - Alternative Emission Limits for Duplicate Source Operations - The OAQ has proposed a section to address duplicate source operations that elect to petition for an alternative emission limit in response comments raised in the Stakeholder Review Process. It was recognized by the Stakeholder Review Workgroup that the issues surrounding the state "duplicate source" rule are very complex. The Chamber supports inclusion of this section that serves to create a review process for alternative emission limits for duplicate source operations. This provides an alternative to litigation which enhances regulatory efficiency.

The Chamber advocated for the removal of the "duplicate source" provisions as an archaic regulatory tool that has long since been rendered obsolete by the Clean Air Act Amendments and specifically by the NSR program. It is recommended that future modifications to Regulation 7 should focus on the need to eliminate these requirements.

## **45 CSR 10 - Sulfur Oxides**

Section 3.4.b. Individual Allowable Stack Emission Rates - The Chamber supports the OAQ's inclusion of provisions that would allow the agency to address those facilities with individual stack allowable emission rates differing from those calculated under the rule, based upon compliance with the criteria set forth in 3.4.b.1 through 3.4.b.6. This rule revision is evidence of the agency's interest in working with the regulated community to assure an implementable program that results in protection of air quality.

Section 4.1.e Deminimus Operations - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of sulfur oxides. Inclusion of this new section is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 10, the Chamber supports the regulatory revisions.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

Section 10.3 Exemptions - The Chamber supports the proposed exemption from the testing, monitoring, recordkeeping and reporting requirements for those operations that are known not to emit levels of sulfur oxides to warrant such requirements. These proposed modifications are clearly intended to streamline the regulation and provide for an appropriate level of regulation commensurate with the environmental impact.

## **45 CSR 17 - Fugitive Particulate Matter**

The proposed revisions to Regulation 17 were presented to the Stakeholder Review Workgroup by the OAQ. The OAQ expressed the need to have a regulatory tool that could be used to require management of fugitive emissions from sources that were not otherwise subject to the OAQ regulatory program. In recognition of that expressed need, it was agreed by the Stakeholder Workgroup that Regulation 17 should be significantly expanded. The



Chamber is supportive of these proposed changes that create a process by which sources would be contacted by the agency and efforts expended to develop a reasonable emissions control or suppression program.

#### **45 CSR 18 - Meat Firing**

The Stakeholder Workgoup discussed the history of the promulgation of the meat-firing regulation and concluded that this regulation was no longer warranted, based upon the fact that its provisions had not recently been invoked, implemented, or useful in an manner to the public, the agency or the potential regulated community. The Chamber supports the elimination of this regulation as clearly within the scope of updating the OAQ program.

Additional modifications have been proposed by the Office of Air Quality for the following regulations to make necessary and appropriate cross-references to the federal program. The Chamber is supportive of these modifications.

#### **45 CSR 16 - New Source Performance Standards**

#### **45 CSR 23 - Municipal Solid Waste Landfills**

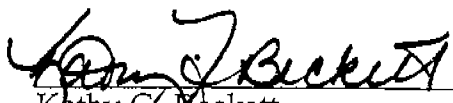
#### **45 CSR 25 - Hazardous Waste Treatment, Storage, or Disposal Facilities**

#### **45 CSR 33 - Acid Rain**

#### **45 CSR 34 - Hazardous Air Pollutants**

In conclusion, the Chamber provided an oral statement at the hearing of July 19, 1999. In that statement the Chamber urged that a thorough Response to Comments be provided by the OAQ concerning the proposed rulemaking package that will explain the intent of the modifications as was agreed during the Stakeholder Review Process. This will serve to memorialize the changes that will be made to the regulations and provide guidance concerning the implementation of these changes.

Respectfully, submitted this 27th of July, 1999.

  
Kathy G. Beckett  
Counsel to the West Virginia Chamber  
of Commerce  
Jackson & Kelly, PLLC  
Post Office Box 553  
Charleston, West Virginia 25311  
(304) 340-1019  
(304) 340-1130 facsimile



# FAX TRANSMISSION

US EPA - REGION III

RUTH KNAPP

1650 ARCH STREET

PHILADELPHIA, PA 19103

(215) 814-2191

FAX: (215) 814-2114/2101

**To:** Mr. Edward Kropp **Date:** July 27, 1999  
**Phone:** 304-558-0885  
**Fax #:** 304-558-1222 **Pages:** 11, including fax  
**From:** Ruth Knapp cover sheet

**Comments:**

Attached are Comments on West Virginia  
Proposed Revisions.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Mr. Edward L. Kropp, Chief  
Office of Air Quality  
West Virginia Department of Environmental Protection  
1558 Washington Street, East  
Charleston, West Virginia 25311

July 27, 1999

Dear Mr. Kropp:

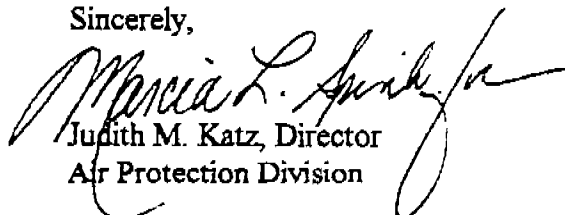
Thank you for granting the extended opportunity to comment on the proposed revisions to the following regulations: 45CSR2, 45CSR3, 45CSR5, 45CSR6 and 45CSR7 to prevent and control particulate matter pollution. Our comments are outlined in an enclosure to this letter.

EPA has serious concerns regarding the use of "Director discretion" language contained in these revisions. In many instances the regulations provide for the Director to approve alternatives to such things as specified stack test methods or monitoring methods to determine opacity. Such language for "Director discretion" is not approvable for regulations to be included in a State Implementation Plan (SIP). You could render these regulations approvable as SIP revisions by adding language which indicates that the Director would only approve alternatives which have also been federally approved. For regulations being adopted for purposes of taking delegation of New Source Performance Standards or Maximum Achievable Control Technology, it is important to note that currently States may not be delegated the authority to approve alternatives to items such as stack test methods.

Our second major concern is the language which provides automatic exemptions to sources from enforcement action. EPA is currently reviewing its policy on excess emissions. A copy of EPA's current policy statement on this issue is enclosed.

Please include this letter and the enclosed comments in the public record on the proposed rule revisions. Ruth Knapp of my staff has been assigned to this project. She may be reached at (215) 814-2191. If you have any questions, please contact Ruth Knapp or Walter Wilkie, Acting Chief, Technical Assessment Branch at (215) 814-2150.

Sincerely,

  
Judith M. Katz, Director  
Air Protection Division

Enclosures

cc: John Benedict

## **Comments on West Virginia Proposed Revisions**

### **General Comments**

1. The proposed revisions to 45CSR5 appear to contain additional revisions to the regulation which have not been submitted for inclusion into the State Implementation Plan (SIP).
2. EPA is currently reviewing its policy on excess emissions and start-ups, shut-downs, maintenance and malfunctions. Enclosed, please find EPA's current official policy statement on this issue as described in the memorandum entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" (February 15, 1983). Generally excess emissions during these periods should be handled with enforcement discretion and not automatically exempted from enforcement action. EPA has tried to identify major provisions that may be effected by this policy and any possible revisions to this policy. However, additional provisions in these proposed regulations could also be effected.

### **Comments on Proposed Changes to WV Regulation 45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"**

#### **45-2-2 Definitions**

1. Section 2.14 states in part "This term does not include process heaters as defined in subsection 2.27." Process Heaters are defined in subsection 2.26 not subsection 2.27.

#### **45-2-8 Testing, Monitoring, Recordkeeping and Reporting**

1. Section 8.1.a and 8.1.b allow the Director to approve equivalent test methods for determining compliance with opacity and mass emission limits. These provisions provide very broad Director's discretion. Although, States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test methods used to determine compliance with opacity or mass limits must be federally approved.
2. Section 8.2.a states that "such monitoring plan shall include, but not be limited to, one or more of the following: continuous measurement of emissions, monitoring of emission control equipment, periodic parametric monitoring, or such other monitoring as required by the Director." This provision appears to indicate that the Director could approve a monitoring plan which did not contain any of the following: monitoring of continuous emissions, monitoring emission control equipment, and parametric monitoring. A clarification should be provided to indicate if this is the intent of the provision, or if the intent was to allow the Director to require monitoring in addition to those types already identified.

3. Section 8.2 a.3 states that "Excursions outside the range of the control equipment or operational parameters . . . will not necessarily constitute a violation of this rule." This provision implies that excess emissions will not necessarily constitute a violation of the SIP. EPA is currently reviewing the policy regarding excess emissions particularly as they relate to startup, shutdown, maintenance, and malfunction and affirmative defense. This provision appears to remove enforcement discretion and would not be acceptable to EPA.

4. Section 8.5 indicates that the Director may revise testing, monitoring, reporting and recordkeeping instructions pertaining to this rule. The term "instructions" is not defined in the rule. This provision provides for very broad Director's discretion. A State may approve minor changes to testing, monitoring, reporting and recordkeeping requirements of this rule. However a State may not solely approve significant changes to these portions of the rule. Significant changes to testing, monitoring, reporting and record keeping must be federally approved.

#### **45-2-9 Start-ups, Shut-downs and Malfunctions**

1. Section 9.3 makes provisions for reporting malfunctions. See **General Comments #3**. Based on the language in the proposed regulation, this portion of the rule would not be acceptable to EPA.

### **Comments on Proposed Revisions to WV 45CSR3 - To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants**

#### **45-3-2 Definitions**

1. The definition of malfunction differs slightly from the definition in 45CSR2. If West Virginia wishes to be consistent, the state could add the phrase "upset condition" as used in 45CSR2.

#### **45-3-3 Emissions of Smoke and/or Particulate Matter Prohibited and Standards of Measurement - Visible**

1. Section 3.1 and 3.2 allow the Director to approve equivalent methods for determining opacity. Although States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test methods used to determine compliance with opacity or mass limits must be federally approved.

#### **45-3-5 Permits**

1. Section 5.3 indicates that permit applicants must demonstrate that they "will not cause or contribute to the violation of applicable ambient air quality standards." This section does not contain specific information about how a source would demonstrate that they would not "cause or

contribute to the violation . . . ” The air quality analyses required can sometimes be complex as is the case with some air modeling analyses. It might be helpful to specify the process and/or guidance that would be used by an applicant to make such a demonstration.

#### **45-3-6 Reports and Testing**

1. Section 6.1 allows the Director to approve equivalent methods for conducting stack tests instead of using the test in 40 CFR Part 60 Appendix A Method 5. Although, States may approve minor modifications to test procedures, alternative methods for determining compliance cannot be approved solely by the State. Any alternative test methods used to determine compliance with mass emission limits must be federally approved.

#### **Comments on Proposed Revisions to 45CSR5 “To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas.”**

##### **45-5-2 Definitions**

1. Section 2.15 indicates that the Director may approve any method which is a standardized method for the measurement of opacity. Any method used to determine opacity must be federally approved.

#### **Comments on Proposed Revisions to 45CSR6 “To Prevent and Control Air Pollution from Combustion of Refuse”**

##### **45-6-7 Reports and Testing**

1. Section 7.1 indicates that the Director may approve alternative stack test methods. Although, States may make minor modifications to test procedures, alternative methods for determining compliance cannot be approved solely by the State. Therefore, any alternative stack test methods used to determine compliance with mass limits must be federally approved.

#### **Comments on 45CSR7 To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations**

##### **45-7-10 Exemptions.**

1. Section 10.3 exempts maintenance operations from Section 4 (emission limits ) if the owner conducts operations in a manner consistent with good air pollution control practices for minimizing emissions. See **General Comment #3**. The current language is not acceptable to

EPA.

2. Section 10.4 allows an owner or operator to apply for alternative visible emission standards for periods of start-up and shut-down. EPA is currently reviewing its policy on excess emissions and start-ups, shut-downs, maintenance and malfunctions. Although this provision does not allow for automatic alternative standards, these provisions could be effected by EPA's policy review.

3. Section 10.5 allows exemptions for small sources from the emission limits of Section 4.1. West Virginia should clarify what source's and/or source types would be effected and demonstrate that this revision would not cause or contribute to violations of ambient air quality standards or increments.

4. Section 10.6 allows the Director to approve exemptions to Subsection 4.2 for sources of emissions that can demonstrate on a case-by-case basis that their emissions are insignificant. West Virginia should clarify what source types this exemption might be applied to and the purpose of providing these exemptions. In addition, the process by which a source obtains an exemption should be included in the provision along with the type of demonstration that would be required to obtain such an exemption.

#### **45-4-11 Alternative Emission Limits for Duplicate Source Operations**

1. Section 11.3 indicates that "approval of alternative allowable emission rates...shall be embodied in a permit issued as an existing stationary source operating permit in accordance with 45CSR13." Any alternative allowable emission rate provided under section 11 of 45CSR7 must be embodied in a federally enforceable permit, and during the permit process, the State must notify EPA that a source is using this process to obtain an alternative limit. If this mechanism does not employ a federally enforceable permit, then a public hearing must be held and the alternative emission limit must be submitted as a revision to the SIP.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 15 1983

OFFICE OF  
AIR, NOISE AND RADIATION

MEMORANDUM

SUBJECT: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions  
*Kathleen M. Bennett*  
FROM: Kathleen M. Bennett, Assistant Administrator  
for Air, Noise and Radiation  
TO: Regional Administrators, Regions I-X

I have been asked to clarify my memorandum of September 28, 1982, concerning policy on excess emissions during startup and shutdown.

Specifically, I stated that "startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedure for the process and control equipment. Accordingly, it is reasonable to expect that careful planning will eliminate violations of emission limitations during such periods." I further stated that "[i]f excess emissions occur during routine startup and shutdown of such equipment, they will be considered as having resulted from a malfunction only if the source can demonstrate that such emissions were actually caused by a sudden and unforeseeable breakdown in the equipment."

A question has been posed as to whether there can be situations in which it is unreasonable to expect that careful planning can eliminate violations of emission limitations during startup and shutdown. I believe that there can be such situations. One such situation, which was already mentioned in the policy, is a malfunction occurring during these periods. A malfunction during startup or shutdown is to be handled as any other malfunction in accordance with the policy as presently written.

Another situation is one in which careful and prudent planning and design will not totally eliminate infrequent short periods of excesses during startup and shutdown. An example of this situation would be a source that starts up or shuts down once or twice a year and during that period there are a few hours when the temperature of the effluent gas is too low to prevent harmful



ormation of chemicals which would cause severe damage to control equipment if the effluent were allowed to pass through the control equipment.

Therefore, during this latter situation, if effluent gases are bypassed which cause an emission limitation to be exceeded, this excess need not be treated as a violation<sup>6</sup> if the source can show that the excesses could not have been prevented through careful and prudent planning and design and that bypassing was unavoidable to prevent loss of life, personal injury, or severe property damage.

I have clarified the policy concerning this issue. A copy is attached.

Attachment

## **Attachment**

# **POLICY ON EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, MAINTENANCE, AND MALFUNCTIONS**

## **Introduction**

Several of the existing State implementation plans (SIPs) provide for an automatic emission limitation exemption during periods of excess emission due to startup, shutdown, maintenance, or malfunction.\* Generally, EPA agrees that the imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner and/or operator is not appropriate. However, any activity which can be foreseen and avoided, or planned, is not within the definition of a sudden and unavoidable breakdown. Since the SIPs must provide for attainment and maintenance of the national ambient air quality standards, SIP provisions on malfunctions must be narrowly drawn. SIPs may, of course, omit any provisions on malfunctions. [For more specific guidance on malfunction provisions for RACT SIPs, see the April 1978 workshop manual for preparing nonattainment plans].

## **I. EXCESS EMISSION FROM MALFUNCTIONS**

### **A. AUTOMATIC EXEMPTION APPROACH**

If a SIP contains a malfunction provision, it cannot be the type that provides for automatic exemption where a malfunction is alleged by a source. Automatic exemptions might aggravate air quality so as not to provide for attainment of the ambient air quality standards. Additional grounds for disapproving a SIP that includes the automatic exemption approach are discussed in more detail at 42 FR 58171 (November 8, 1977) and 42 FR 21372 (April 27, 1977). As a result, EPA cannot approve any SIP revisions that provides automatic exemptions for malfunctions.

\* The term "excess emission" means an air emission rate which exceeds any applicable emission limitation, and "malfunction" means a sudden and unavoidable breakdown of process or control equipment.

### **B. ENFORCEMENT DISCRETION APPROACH--SIP EMISSION LIMITATION ADEQUATE TO ATTAIN AMBIENT STANDARDS**

EPA can approve SIP revisions which incorporate the "enforcement discretion approach". Such an approach can require the source to demonstrate to the appropriate State agency that the excess emissions, though constituting a violation, were due to an unavoidable malfunction. Any malfunction provision must provide for the commencement of a proceeding to notify the source of its violation and to determine whether enforcement action should be undertaken for any period of excess emissions. In determining whether an enforcement action is appropriate, satisfaction of the following criteria should be considered.

1. To the maximum extent practicable the air pollution control equipment, process equipment, or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;
2. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;
3. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;
4. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and
5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

### **II. EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, AND MAINTENANCE**

Any activity or event which can be foreseen and avoided, or planned, falls outside of the definition of sudden and unavoidable breakdown of equipment. For example, a sudden breakdown which could have been avoided by better operation and maintenance practice is not a malfunction. In such cases, the control agency must enforce for violations of the emission limitation. Other such common events are startup and shutdown of equipment, and scheduled maintenance.

Engineering Section approach?

3

\* Startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning and design will eliminate violations of emission limitations during such periods. However, for a few sources there may exist infrequent short periods of excess emissions during startup and shutdown which cannot be avoided. Excess emissions during these infrequent short periods need not be treated as violations providing that the source adequately shows that the excess could not have been prevented through careful planning and design and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage.

If excess emissions occur during routine startup and shutdown due to a malfunction, then those instances will be treated as other malfunctions which are subject to the malfunction provisions of this policy. (Reference Part I above).

Similarly, scheduled maintenance is a predictable event which can be scheduled at the discretion of the operator, and which can, therefore, be made to coincide with maintenance on production equipment, or other source shutdowns. Consequently, excess emissions during periods of scheduled maintenance should be treated as a violation unless a source can demonstrate that such emissions could have been avoided through better scheduling for maintenance or through better operation and maintenance practices.

not

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\*\*\* ACTIVITY REPORT \*\*\*  
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RECEPTION OK

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PAGES 11

RESULT OK

Tammy  
Karen  
Earl  
Laura

Karen



Allegheny Power

Supply Business  
Planning Division

800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(724) 837-3000 FAX: (724) 838-6888

July 16, 1999

JUL 19

Edward L. Kropp, Chief  
Office of Air Quality  
WV Division of Environmental Protection  
1558 Washington Street, East  
Charleston, West Virginia 25311

**Re: Proposed Modifications to 45 CSR 2 and 10**

The West Virginia Division of Environmental Protection, Office of Air Quality recently published proposed revisions to several legislative rules including 45 CSR 2, "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers" and 45 CSR 10, "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides". These comments on the proposed revisions are provided on behalf of West Penn Power Company, Monongahela Power Company, and The Potomac Edison Company (all d/b/a "Allegheny Power") who own and/or operate electric generating facilities within West Virginia (herein after referred to as "Allegheny Power").

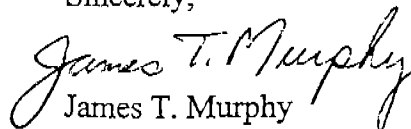
Allegheny Power was an active participant in the Stakeholder Regulatory Review Workgroup convened by the Office of Air Quality (OAQ) to review these rules. Allegheny Power extends its compliments to the OAQ staff for the long hours it committed to this effort. Allegheny Power is supportive of such a review process as a means to develop and improve state air policy. In some instances compromise was required and Allegheny Power supports the proposed revisions in the spirit of compromise. The proposed revisions, as a whole, are appropriate and result in improvement in the state air quality program.

Allegheny Power has also contributed to, and supports, the more detailed comments submitted by the West Virginia Chamber of Commerce.

If you would like to discuss these comments, please feel free to contact me by phone at (724) 830-5925 or e-mail at [jmurph1@alleghenypower.com](mailto:jmurph1@alleghenypower.com).

Allegheny Power appreciates the opportunity to comment on these proposed rule revisions and reserves the right to make additional comments and to amend, modify, or delete the comments herein prior to issuance of a final rule. The submission of these comments is not intended as a waiver of any rights to which Allegheny Power may be entitled by law, equity, practice or court order.

Sincerely,

  
James T. Murphy  
Air Quality Manager

**Public Hearing Statement of  
Kathy G. Beckett  
On Behalf of the West Virginia Chamber of Commerce  
July 19, 1999**

My name is Kathy G. Beckett, an attorney with the law firm of Jackson & Kelly PLLC. I am offering the following statement on behalf of the West Virginia Chamber of Commerce ("the Chamber") concerning the rulemaking package presented for comment by the Office of Air Quality addressing 45 CSR 1, 2, 3, 4, 5, 6, 7, 10, 12, 16, 17, 18, 23, 25, 33, and 34. Although the Chamber will be filing more detailed written comments concerning each of these rules by the filing deadline of July 28, 1999, it would like to offer the following general comments on this rulemaking package.

The Office of Air Quality ("OAQ") held a public meeting in Flatwoods, WV on November 17, 1998, where it announced its goal of updating and "harmonizing" OAQ's existing rules in time for submittal to the 2000 Legislature. It was announced that all rules were open for discussion and review. With that announcement began a rigorous schedule of meetings to begin the process of collecting comments and ideas about the need to update and streamline the state's air quality regulatory program. For those of you who attended the meetings, I do not have to tell you about the tireless commitment of time the OAQ staff devoted to managing the review process. Additional support from the stakeholder participants combined to create a very rich experience.

The Chamber is a strong supporter of the stakeholder review process. The model where a state administrative agency invites the public to engage in an honest, thoughtful, open and informal exchange of interests and ideas with the goal of proposing public policy is an excellent one. Those who attended and participated in the meetings that have taken place over the past several months were presented with an opportunity to inquire as to the

purpose of various provisions, question one another's needs, suggest solutions to issues, and propose language, all of which were presented to the Chief for his consideration." The more varied the vantage points of those engaged in the discussion the more creative the answer became. The Chamber applauds this process and encourages the agency and the public to look for other opportunities to engage in such an exercise.

As will be identified in the written comments filed on behalf of the Chamber, there is a very delicate balance that is created in the spirit of compromise. Some of the proposed modifications that were the subject of the review process represent concepts that meet the specific needs and concerns of certain stakeholders. Recognition of the needs of all stakeholders and balancing those needs against one another <sup>and the law</sup> is what the development of public policy is about. Great efforts were made during the discussions to blend the needs of the group into the recommended changes. The Chamber recommends that the OAQ to develop a thorough Response to Comments, as a means of recording the intent of the modifications that have been made.

What made this process work is the stated goal of streamlining and updating the program. Where appropriate, the OAQ has proposed incorporation of the updated federal air program. The OAQ has also proposed removal of provisions that are no longer useful. Although this package certainly represents progress, there remain antiquated regulatory concepts that we would all be well served to review again. Tossing away items from our past can be difficult, but the result could be a fresh, new, and efficient regulatory program.

Tonight the Chamber is participating in the next phase of the public review process by providing oral comments on the proposed regulatory changes that have been inspired, in part, by the recommendations of the stakeholders. The Chamber supports the stakeholder process and supports this rulemaking package.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Mr. Edward L. Kropp, Chief  
Office of Air Quality  
West Virginia Department of Environmental Protection  
1558 Washington Street, East  
Charleston, West Virginia 25311

July 27, 1999

Dear Mr. Kropp:

Thank you for granting the extended opportunity to comment on the proposed revisions to the following regulations: 45CSR2, 45CSR3, 45CSR5, 45CSR6 and 45CSR7 to prevent and control particulate matter pollution. Our comments are outlined in an enclosure to this letter.

EPA has serious concerns regarding the use of "Director discretion" language contained in these revisions. In many instances the regulations provide for the Director to approve alternatives to such things as specified stack test methods or monitoring methods to determine opacity. Such language for "Director discretion" is not approvable for regulations to be included in a State Implementation Plan (SIP). You could render these regulations approvable as SIP revisions by adding language which indicates that the Director would only approve alternatives which have also been federally approved. For regulations being adopted for purposes of taking delegation of New Source Performance Standards or Maximum Achievable Control Technology, it is important to note that currently States may not be delegated the authority to approve alternatives to items such as stack test methods.

Our second major concern is the language which provides automatic exemptions to sources from enforcement action. EPA is currently reviewing its policy on excess emissions. A copy of EPA's current policy statement on this issue is enclosed.

Please include this letter and the enclosed comments in the public record on the proposed rule revisions. Ruth Knapp of my staff has been assigned to this project. She may be reached at (215) 814-2191. If you have any questions, please contact Ruth Knapp or Walter Wilkie, Acting Chief, Technical Assessment Branch at (215) 814-2150.

Sincerely,

*Judith M. Katz*  
Judith M. Katz, Director  
Air Protection Division

Enclosures

cc: John Benedict

## **Comments on West Virginia Proposed Revisions**

### **General Comments**

- 1.. The proposed revisions to 45CSR5 appear to contain additional revisions to the regulation which have not been submitted for inclusion into the State Implementation Plan (SIP).
2. EPA is currently reviewing its policy on excess emissions and start-ups, shut-downs, maintenance and malfunctions. Enclosed, please find EPA's current official policy statement on this issue as described in the memorandum entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" (February 15, 1983). Generally excess emissions during these periods should be handled with enforcement discretion and not automatically exempted from enforcement action. EPA has tried to identify major provisions that may be effected by this policy and any possible revisions to this policy. However, additional provisions in these proposed regulations could also be effected.

### **Comments on Proposed Changes to WV Regulation 45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"**

#### **45-2-2 Definitions**

1. Section 2.14 states in part "This term does not include process heaters as defined in subsection 2.27." Process Heaters are defined in subsection 2.26 not subsection 2.27.

#### **45-2-8 Testing, Monitoring, Recordkeeping and Reporting**

1. Section 8.1.a and 8.1.b allow the Director to approve equivalent test methods for determining compliance with opacity and mass emission limits. These provisions provide very broad Director's discretion. Although, States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test methods used to determine compliance with opacity or mass limits must be federally approved.
2. Section 8.2.a states that "such monitoring plan shall include, but not be limited to, one or more of the following: continuous measurement of emissions, monitoring of emission control equipment, periodic parametric monitoring, or such other monitoring as required by the Director." This provision appears to indicate that the Director could approve a monitoring plan which did not contain any of the following: monitoring of continuous emissions, monitoring emission control equipment, and parametric monitoring. A clarification should be provided to indicate if this is the intent of the provision, or if the intent was to allow the Director to require monitoring in addition to those types already identified.

3. Section 8.2 a.3 states that “Excursions outside the range of the control equipment or operational parameters . . . will not necessarily constitute a violation of this rule.” This provision implies that excess emissions will not necessarily constitute a violation of the SIP. EPA is currently reviewing the policy regarding excess emissions particularly as they relate to startup, shutdown, maintenance, and malfunction and affirmative defense. This provision appears to remove enforcement discretion and would not be acceptable to EPA.

4. Section 8.5 indicates that the Director may revise testing, monitoring, reporting and recordkeeping instructions pertaining to this rule. The term “instructions” is not defined in the rule. This provision provides for very broad Director’s discretion. A State may approve minor changes to testing, monitoring, reporting and recordkeeping requirements of this rule. However a State may not solely approve significant changes to these portions of the rule. Significant changes to testing, monitoring, reporting and record keeping must be federally approved.

#### **45-2-9 Start-ups, Shut-downs and Malfunctions**

1. Section 9.3 makes provisions for reporting malfunctions. See **General Comments #3**. Based on the language in the proposed regulation, this portion of the rule would not be acceptable to EPA.

### **Comments on Proposed Revisions to WV 45CSR3 - To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants**

#### **45-3-2 Definitions**

1. The definition of malfunction differs slightly from the definition in 45CSR2. If West Virginia wishes to be consistent, the state could add the phrase “upset condition” as used in 45CSR2.

#### **45-3-3 Emissions of Smoke and/or Particulate Matter Prohibited and Standards of Measurement - Visible**

1. Section 3.1 and 3.2 allow the Director to approve equivalent methods for determining opacity. Although States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test methods used to determine compliance with opacity or mass limits must be federally approved.

#### **45-3-5 Permits**

1. Section 5.3 indicates that permit applicants must demonstrate that they “will not cause or contribute to the violation of applicable ambient air quality standards.” This section does not contain specific information about how a source would demonstrate that they would not “cause or

contribute to the violation . . . ” The air quality analyses required can sometimes be complex as is the case with some air modeling analyses. It might be helpful to specify the process and/or guidance that would be used by an applicant to make such a demonstration.

#### **45-3-6 Reports and Testing**

1. Section 6.1 allows the Director to approve equivalent methods for conducting stack tests instead of using the test in 40 CFR Part 60 Appendix A Method 5. Although, States may approve minor modifications to test procedures, alternative methods for determining compliance cannot be approved solely by the State. Any alternative test methods used to determine compliance with mass emission limits must be federally approved.

#### **Comments on Proposed Revisions to 45CSR5 “To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas.”**

##### **45-5-2 Definitions**

1. Section 2.15 indicates that the Director may approve any method which is a standardized method for the measurement of opacity. Any method used to determine opacity must be federally approved.

#### **Comments on Proposed Revisions to 45CSR6 “To Prevent and Control Air Pollution from Combustion of Refuse”**

##### **45-6-7 Reports and Testing**

1. Section 7.1 indicates that the Director may approve alternative stack test methods. Although, States may make minor modifications to test procedures, alternative methods for determining compliance cannot be approved solely by the State. Therefore, any alternative stack test methods used to determine compliance with mass limits must be federally approved.

#### **Comments on 45CSR7 To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations**

##### **45-7-10 Exemptions.**

1. Section 10.3 exempts maintenance operations from Section 4 (emission limits ) if the owner conducts operations in a manner consistent with good air pollution control practices for minimizing emissions. See **General Comment #3**. The current language is not acceptable to

EPA.

2. Section 10.4 allows an owner or operator to apply for alternative visible emission standards for periods of start-up and shut-down. EPA is currently reviewing its policy on excess emissions and start-ups, shut-downs, maintenance and malfunctions. Although this provision does not allow for automatic alternative standards, these provisions could be effected by EPA's policy review.
3. Section 10.5 allows exemptions for small sources from the emission limits of Section 4.1. West Virginia should clarify what source's and/or source types would be effected and demonstrate that this revision would not cause or contribute to violations of ambient air quality standards or increments.
4. Section 10.6 allows the Director to approve exemptions to Subsection 4.2 for sources of emissions that can demonstrate on a case-by-case basis that their emissions are insignificant. West Virginia should clarify what source types this exemption might be applied to and the purpose of providing these exemptions. In addition, the process by which a source obtains an exemption should be included in the provision along with the type of demonstration that would be required to obtain such an exemption.

#### **45-4-11 Alternative Emission Limits for Duplicate Source Operations**

1. Section 11.3 indicates that "approval of alternative allowable emission rates...shall be embodied in a permit issued as an existing stationary source operating permit in accordance with 45CSR13." Any alternative allowable emission rate provided under section 11 of 45CSR7 must be embodied in a federally enforceable permit, and during the permit process, the State must notify EPA that a source is using this process to obtain an alternative limit. If this mechanism does not employ a federally enforceable permit, then a public hearing must be held and the alternative emission limit must be submitted as a revision to the SIP.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 15 1983

OFFICE OF  
AIR, NOISE AND RADIATION

MEMORANDUM

SUBJECT: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions  
FROM: *Kathleen M. Bennett*  
Kathleen M. Bennett, Assistant Administrator  
for Air, Noise and Radiation  
TO: Regional Administrators, Regions I-X

I have been asked to clarify my memorandum of September 28, 1982, concerning policy on excess emissions during startup and shutdown.

Specifically, I stated that "startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedure for the process and control equipment. Accordingly, it is reasonable to expect that careful planning will eliminate violations of emission limitations during such periods." I further stated that "[i]f excess emissions occur during routine startup and shutdown of such equipment, they will be considered as having resulted from a malfunction only if the source can demonstrate that such emissions were actually caused by a sudden and unforeseeable breakdown in the equipment."

A question has been posed as to whether there can be situations in which it is unreasonable to expect that careful planning can eliminate violations of emission limitations during startup and shutdown. I believe that there can be such situations. One such situation, which was already mentioned in the policy, is a malfunction occurring during these periods. A malfunction during startup or shutdown is to be handled as any other malfunction in accordance with the policy as presently written.

Another situation is one in which careful and prudent planning and design will not totally eliminate infrequent short periods of excesses during startup and shutdown. An example of this situation would be a source that starts up or shuts down once or twice a year and during that period there are a few hours when the temperature of the effluent gas is too low to prevent harmful

ormation of chemicals which would cause severe damage to control equipment if the effluent were allowed to pass through the control equipment.

Therefore, during this latter situation, if effluent gases are bypassed which cause an emission limitation to be exceeded, this excess need not be treated as a violation<sup>(b)</sup> if the source can show that the excesses could not have been prevented through careful and prudent planning and design and that bypassing was unavoidable to prevent loss of life, personal injury, or severe property damage.

I have clarified the policy concerning this issue. A copy is attached.

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 15 1983

OFFICE OF  
AIR, NOISE AND RADIATION

MEMORANDUM

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Another situation is one in which careful and prudent planning and design will not totally eliminate infrequent short periods of excesses during startup and shutdown. An example of this situation would be a source that starts up or shuts down once or twice a year and during that period there are a few hours when the temperature of the effluent gas is too low to prevent harmful



ormation of chemicals which would cause severe damage to control equipment if the effluent were allowed to pass through the control equipment.

Therefore, during this latter situation, if effluent gases are bypassed which cause an emission limitation to be exceeded, this excess need not be treated as a violation<sup>(1)</sup> if the source can show that the excesses could not have been prevented through careful and prudent planning and design and<sup>(2)</sup> that bypassing was unavoidable to prevent loss of life, personal injury, or severe property damage.

I have clarified the policy concerning this issue. A copy is attached.

Attachment

## Attachment

# POLICY ON EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, MAINTENANCE, AND MALFUNCTIONS

## Introduction

Several of the existing State implementation plans (SIPs) provide for an automatic emission limitation exemption during periods of excess emission due to startup, shutdown, maintenance, or malfunction.\* Generally, EPA agrees that the imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner and/or operator is not appropriate. However, any activity which can be foreseen and avoided, or planned, is not within the definition of a sudden and unavoidable breakdown. Since the SIPs must provide for attainment and maintenance of the national ambient air quality standards, SIP provisions on malfunctions must be narrowly drawn. SIPs may, of course, omit any provisions on malfunctions. [For more specific guidance on malfunction provisions for RACT SIPs, see the April 1978 workshop manual for preparing nonattainment plans].

## I. EXCESS EMISSION FROM MALFUNCTIONS

### A. AUTOMATIC EXEMPTION APPROACH

If a SIP contains a malfunction provision, it cannot be the type that provides for automatic exemption where a malfunction is alleged by a source. Automatic exemptions might aggravate air quality so as not to provide for attainment of the ambient air quality standards. Additional grounds for disapproving a SIP that includes the automatic exemption approach are discussed in more detail at 42 FR 58171 (November 8, 1977) and 42 FR 21372 (April 27, 1977). As a result, EPA cannot approve any SIP revisions that provides automatic exemptions for malfunctions.

\* The term "excess emission" means an air emission rate which exceeds any applicable emission limitation, and "malfunction" means a sudden and unavoidable breakdown of process or control equipment.

B. ENFORCEMENT DISCRETION APPROACH--SIP EMISSION  
LIMITATION ADEQUATE TO ATTAIN AMBIENT STANDARDS

EPA can approve SIP revisions which incorporate the "enforcement discretion approach". Such an approach can require the source to demonstrate to the appropriate State agency that the excess emissions, though constituting a violation, were due to an unavoidable malfunction. Any malfunction provision must provide for the commencement of a proceeding to notify the source of its violation and to determine whether enforcement action should be undertaken for any period of excess emissions. In determining whether an enforcement action is appropriate, satisfaction of the following criteria should be considered.

1. To the maximum extent practicable the air pollution control equipment, process equipment, or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;
2. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;
3. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;
4. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and
5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

II. EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, AND  
MAINTENANCE

Any activity or event which can be foreseen and avoided, or planned, falls outside of the definition of sudden and unavoidable breakdown of equipment. For example, a sudden breakdown which could have been avoided by better operation and maintenance practice is not a malfunction. In such cases, the control agency must enforce for violations of the emission limitation. Other such common events are startup and shutdown of equipment, and scheduled maintenance.

Startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning and design will eliminate violations of emission limitations during such periods. However, for a few sources there may exist infrequent short periods of excess emissions during startup and shutdown which cannot be avoided. Excess emissions during these infrequent short periods need not be treated as violations providing that the source adequately shows that the excess could not have been prevented through careful planning and design and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage.

If excess emissions occur during routine startup and shutdown due to a malfunction, then those instances will be treated as other malfunctions which are subject to the malfunction provisions of this policy. (Reference Part I above).

Similarly, scheduled maintenance is a predictable event which can be scheduled at the discretion of the operator, and which can, therefore, be made to coincide with maintenance on production equipment, or other source shutdowns. Consequently, excess emissions during periods of scheduled maintenance should be treated as a violation unless a source can demonstrate that such emissions could have been avoided through better scheduling for maintenance or through better operation and maintenance practices.

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Terri  
Karen -  
Laura  
Earl  
Robert

Karen



AMERICAN  
ELECTRIC  
POWER

Mr. Edward L. Kropp, Chief  
Office of Air Quality, WVDEP  
1558 Washington Street, East  
Charleston, West Virginia 25311

July 27, 1999

Dear Chief Kropp:

**RE: Comments on PM/SO<sub>2</sub> Reg. Revisions**

We have reviewed the following three regulations recently proposed for revision by the Office of Air Quality and offer the following comments on behalf of American Electric Power Corp. (AEP). Before addressing specific comments, we want to thank the OAQ for providing the opportunity for us to participate in the stakeholder process used to revise these regulations. The revision of these regulations was simplified under the leadership of the OAQ staff and this process was a well-managed program.

**45 CSR 2:**

§2.21 AEP suggests that the OAQ reconsider the definition of particulate matter as it appears in the proposed regulation. This definition must be made consistent with the definition found within the NSPS rules that regulate new sources of the type covered by 45CSR2. The proposed language clarifies the fact that 45CSR2 is intended to regulate primary particulates and is not intended to regulate condensable gases. The NSPS regulations for these types of sources (40CFR60 Subparts D, Da, Db, and Dc) use a similar definition and further specify a filter box temperature that prevents the false collection of condensable gases as a particulate (see comment on 45CSR2 Appendix below). The following proposed language should be used in this regulation:

"Particulate matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid, as measured by the applicable reference test method for that type of source or an equivalent or alternative method.

§3.2 and 3.3: AEP requests that the OAQ consider the clarification of using measurements from a certified continuous opacity monitoring system to show compliance with the opacity limit. It is obvious that when method 9 is used, that the data will be in the form of a 6-minute average, however it is not so obvious when a continuous monitoring system is used. The rule should specify that 6-minute averages will be used for the demonstration even when using a monitoring system.

**45 CSR 2 APPENDIX:**

§4.1.a: At a minimum, AEP suggests that the OAQ change the temperature setpoint of the oven specified as 250 °F to a temperature consistent with the NSPS regulations for sources of the type regulated by 45CSR2. 40CFR60 Subparts D, Da, Db, and Dc each specify a temperature setpoint of 320 °F. Furthermore, reference test method 5B (for scrubbed units) specifies a temperature of 320 °F. A temperature of this magnitude is more in line with actual stack temperatures of the non-scrubbed

utility sources and method 5B and ensures that condensable gases are not transformed into liquid and falsely measured as particulate. A temperature of this magnitude becomes more critical when particulates are being measured on sources that burn the higher sulfur coal common in the East. We believe that a more appropriate way to handle the issue of stack testing under 45CSR2 would be to simply reference the appropriate test method and not attempt to rewrite it within the Appendix to 45CSR2.

#### 45 CSR 5

§2.15: As agreed upon during the stakeholder process, the "opacity" definition should be slightly modified. The second part of the opacity definition should be deleted to make it consistent with the definition for opacity in 45CSR2. The following paragraph properly states the needed revision:

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background ~~as determined by any chart, recorder, indicator, device or method which is a standardized method for the measurement approved or accepted for use by the Director.~~

§3.2 and §3.3: Recognizing that the revisions to these two sections were discussed extensively during the stakeholder process, we remain concerned that the stringency of these two requirements is being significantly increased. We understand that the purpose of revising 45CSR5 was to clarify and modernize the regulation but not to increase the stringency. We believe that the new opacity limit listed in these sections should be higher.

We feel a more appropriate opacity limit for §3.2 would be 50% if the OAQ is prepared to slightly increase the stringency of the rule or 55% if the OAQ is satisfied with the current stringency of the rule. We believe that the proper method for determining a 6-minute opacity limit that is equivalent to the previous limit of 5 minutes during a 1-hour period is as follows. Under the old limit, a source could conceivably operate at 60% for a continuous five-minute period before an exceedance occurred. In order to convert to a 6-minute average, one must make the assumption that the source would then be back in compliance with the 20% standard for the final minute of the 6-minute period. The resulting average opacity reading would then be 53% calculated as follows:  $[(5*60)+(1*20)]/6$ . The equivalent standard for §3.3 could be similarly calculated as 46%. Therefore, with respect to §3.3, we propose a 50% limit if the OAQ is not interested in increasing the stringency of the rule and 45% if the OAQ is prepared to slightly increase the stringency of the rule.

§9.2: We believe that the reference in this section is incorrect and that §9.2 should reference subsection 4.1.b, not §4.2 as noted.

#### 45 CSR 10:

§3.1.a: The applicable emission limit in this section should be modified. Recent modeling completed as part of the Marshall County sulfur dioxide SIP revision process has determined that the proper SO<sub>2</sub> weight emission standard for the fuel burning units of the Kammer Plant should be the product of 2.7 and the total design heat inputs for such units. The paragraph below shows the proposed revision to this section:

For fuel burning units of the Kammer Plant of Ohio Power Company, located in Air Quality Control Region I, the product of 6-8 2.7 and the total design heat inputs for such units discharging through those stacks in million British Thermal Units (BTU's) per hour.

§3.8: AEP understands that the OAQ has no intentions of requiring 24-hour stack tests, however as discussed during the stakeholder process, we believe that the opening sentence in this section could be interpreted to require 24-hour stack tests. AEP requests the OAQ reconsider our previous comment and modify the first sentence of this section. The first three words of the sentence should be deleted,

July 27, 1999

Page 3

and the sentence should read as follows: "Compliance with the allowable sulfur dioxide emission limitations..." It seems that the purpose of this sentence is to state the averaging time on which the emission rates are based and is therefore an integral part of the emissions standard and not a testing condition. Reference to compliance tests in this section could be misinterpreted to require a 24 hour long compliance test. There should be no concern that the OAQ's authority to require compliance testing is being circumvented by making the proposed change, as §8.1.a specifically provides the OAQ with ability to require compliance tests.

§8.2.a: AEP recognizes that the issues of testing/demonstrating compliance and monitoring for compliance were discussed extensively during the stakeholder process, however we believe it is imperative that this issue be properly clarified within the rule. This paragraph should make it clear that monitoring is not intended to demonstrate compliance. Compliance is demonstrated by periodically conducting a reference method test. The first sentence of this paragraph should be modified as follows: "...shall install such stack gas monitoring devices as the Director deems necessary to determine monitor compliance with the provisions of this rule" in order to properly reflect the role of a continuous emission monitoring device.

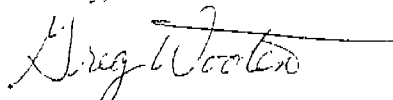
§8.2.c: Similar to our comment on §8.2.a we request that this paragraph be clarified to show that monitoring is not intended as a demonstration test for compliance. The first sentence of this paragraph should be modified as follows: "...manufacturing process source(s) or combustion source(s) shall ~~demonstrate~~ monitor compliance with sections..."

§8.2.c.1.A: As agreed upon during the stakeholder process, a statement should be include in this section confirming that sources meeting the requirements of 40 CFR 75 (Acid Rain) Appendix B will be deemed to have fulfilled the requirements for a the quality assurance requirements.

§8.2.c.2: The subsection referenced in this section appears to be incorrect. We believe the proper reference should be §8.2.c., not §8.5 as noted.

Again, thank you for the opportunity to participate in the stakeholder process that was used to formulate many of the revisions that have been proposed in these regulations and for the opportunity to comment on the proposed regulations. If you have any questions concerning any of the comments that have been made, please contact me at (614) 223-1262 or at the above address.

Sincerely,



Greg Wooten  
Air Quality Section  
Environmental Services Division

xc:      T. J. Carroll - WVDEP Office of Air Quality  
         D. W. Kemp - Legal  
         M. R. Robida/J. C. Lytle/F. E. Blake/J. P. Novotny - Environmental Services  
         T. P. Mallan - Charleston  
         K. Beckett - Jackson & Kelly  
         D. M. Flannery - Jackson & Kelly

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## 45CSR2

### TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM COMBUSTION OF FUEL IN INDIRECT HEAT EXCHANGERS

#### RESPONSE TO COMMENTS

On July 19, 1999 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR2 - "To Prevent and Control Air Pollution from Combustion of Fuel in Indirect Heat Exchangers." The Division of Environmental Protection, Office of Air Quality (OAQ) received written comments on the rule from the West Virginia Chamber of Commerce, the United States Environmental Protection Agency (US EPA) Region III, American Electric Power (AEP), Allegheny Power, and Conni Gratot Lewis. In addition, two persons commented at the public hearing concerning all of the OAQ's proposed rules. Both commenters were generally supportive of the proposed rules and the stakeholder process that was utilized by the OAQ to generate the proposed rules. One comment was received from the United States Environmental Protection Agency, Region III, requesting that the public comment period be extended. The OAQ responded to this comment by extending the comment period from July 19, 1999, to July 28, 1999. The OAQ has summarized these comments and provides the following response.

#### I. Commenter: AEP

##### COMMENT A. Definition of Particulate Matter

*Commenter requested the addition of "as measured by the applicable reference test method for that type of source or an equivalent or alternative method" to the definition of particulate matter.*

RESPONSE A. The definition of "particulate matter" is consistent throughout the regulations governing air pollution due to particulate matter, including 45CSR2, 45CSR3, 45CSR5, 45CSR7 and 45CSR17. The OAQ does not believe that the additional language is needed.

##### COMMENT B. Subsections 3.2 and 3.3

*Commenter expressed concern that the language of subsections 3.2 and 3.3 was clear that opacity was to be determined on a 6-minute average basis when visual emissions were taken using Method 9. However, it was not clear that a 6-minute average should also be used when continuous opacity monitoring systems (COMS) were used.*

RESPONSE B. The language that specifies that opacity is determined on a six-minute block average is contained in subsection 3.1, and the OAQ believes no further clarification is needed.

**COMMENT C.**        45CSR2 Appendix, Subdivision 4.1.a  
*Commenter expressed concern that the temperature setpoint of the oven specified in the Appendix is 250°F, while the setpoint specified in Method 5B is 320°F for scrubbed units. Commenter requested that the provision be changed to be consistent with Method 5B.*

**RESPONSE C.**        The Appendix to 45CSR2 was never intended to be the same as Method 5 or Method 5B. The test method set forth in the Appendix is the EPA SIP approved test method to demonstrate compliance with 45CSR2, and the OAQ does not believe that a discrepancy between it and another EPA approved test method, which is not SIP approved, is sufficient reason to warrant the requested change.

**II.      Commenter: US EPA**

**COMMENT A.**        Incorrect reference  
*Commenter notes that subsection 2.14 states in part “This term does not include process heaters as defined in subsection 2.27.” Process heaters are defined in subsection 2.26 not subsection 2.27.*

**RESPONSE A.**        OAQ concurs and will make the correction.

**COMMENT B.**        Subdivisions 8.1.a and 8.1.b  
*Subdivisions 8.1.a and 8.1.b allow the Director to approve equivalent test methods for determining compliance with opacity and mass emission limits. These provisions provide very broad Director’s discretion. Although States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test method used to determine compliance with opacity or mass limits must be federally approved.*

**RESPONSE B.**        OAQ recognizes EPA’s policy and guidance on Director’s discretion and will revise this section to include the phrase “equivalent EPA approved method”.

**COMMENT C.**        Subdivision 8.2.a  
*Subdivision 8.2.a states that “such monitoring plan shall include, but not be limited to, one or more of the following: continuous measurement of emissions, monitoring of emission control equipment, periodic parametric monitoring, or such other monitoring as required by the Director.” This provision appears to indicate that the Director could approve a monitoring plan which did not contain any of the following: monitoring of continuous emissions, monitoring emission control equipment, and parametric monitoring. A clarification should be provided to indicate if this is the intent*

*of the provision, or if the intent was to allow the Director to require monitoring in addition to those types already identified.*

RESPONSE C.      OAQ believes the language reflects the intent which is to allow the Director to approve a monitoring plan which may not necessarily contain continuous monitoring of emissions, monitoring of control equipment or parametric monitoring, if he/she has reason to believe that such a plan is adequate.

COMMENT D.      Paragraph 8.2.a.3  
*Paragraph 8.2.a.3 states that “Excursions outside the range of the control equipment or operational parameters . . . will not necessarily constitute a violation of this rule.” This provision implies that excess emissions will not necessarily constitute a violation of the SIP. EPA is currently reviewing the policy regarding excess emissions particularly as they relate to startup, shutdown, maintenance, and malfunction and affirmative defense. This provision appears to remove enforcement discretion and would not be acceptable to EPA.*

RESPONSE D.      This paragraph was specifically intended to address monitoring of control equipment and operational parameters. The OAQ believes this provision is similar to EPA’s compliance assurance monitoring rules in that excursions outside of established parameters may not necessarily be violations of the applicable standard. This paragraph was not intended to address excess emissions relating to startups, shutdowns, or malfunctions.

COMMENT E.      Subsection 8.5  
*Subsection 8.5 indicates that the Director may revise testing, monitoring, reporting and recordkeeping instructions pertaining to this rule. The term “instructions” is not defined in the rule. This provision provides for very broad Director’s discretion. A State may approve minor changes to testing, monitoring, reporting and recordkeeping requirements of this rule. However a State may not solely approve significant changes to these portions of the rule. Significant changes to testing, monitoring, reporting and record keeping must be federally approved.*

RESPONSE E.      This provision simply allows the Director the authority to establish the format records are to be maintained or submitted in, the frequency of submittal, the frequency of testing and other similar requirements. Subsection 8.5 also specifies that the “instructions” will be “in the form of an interpretive rule”, which is also subject to public review and comment.

**III. Commenter: WV Chamber of Commerce**

**COMMENT A.**     Sections 3, visible emission standard  
*Commenter supports the inclusion of the modifications to the regulation to make it more consistent with the six-minute averaging of the rule and to meet the needs of the regulated community, without compromising air quality.*

**RESPONSE A.**     No response required.

**COMMENT B.**     Section 8, testing, monitoring, recordkeeping and reporting  
*Commenter supports the regulatory revisions the intent of which are to enhance the recordkeeping and reporting to assure the effectiveness of the rule.*

**RESPONSE B.**     No response required.

**COMMENT C.**     Subsection 8.4  
*Commenter supports the revisions which include the concept of alternatives to the testing, monitoring and reporting requirements of this rule.*

**RESPONSE C.**     No response required.

**IV. Commenter: Allegheny Power**

**COMMENT A.**     45CSR2  
*Commenter expressed support for the stakeholder process and the proposed revisions to 45CSR2 in the spirit of compromise.*

**RESPONSE A.**     No response required.

**V. Commenter: Conni Gratop Lewis**

**COMMENT A.**     *Commenter expressed concern about the lack of deadlines throughout the proposed rules. Commenter believes the rules would be strengthened if such language was included in the rules where appropriate.*

**RESPONSE A.**     The OAQ believes that deadlines are established in 45CSR2, where appropriate. For example, paragraph 8.2.a.2 establishes deadlines for submittal of monitoring plans and deadlines for agency review.

**COMMENT B.**      *Commenter expressed support for the stakeholder process and 45CSR2 as proposed.*

**RESPONSE B.**      No response required.