

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

FILED

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**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: AIR POLLUTION CONTROL COMMISSION TITLE NUMBER: 45CSR5

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR5

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from
the Operation of Coal Preparation Plants and Coal Handling Operations"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

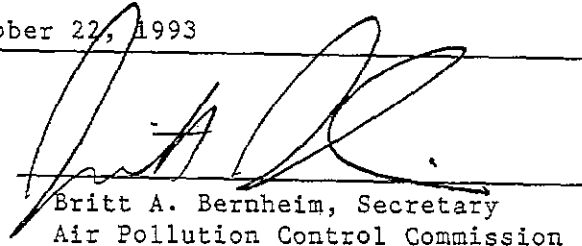
TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 110

SECTION 64-3-1a, PASSED ON May 26, 1993

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: October 22, 1993


Britt A. Bernheim, Secretary
Air Pollution Control Commission

4.80

45CSR5

TITLE 45
LEGISLATIVE RULES
WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

SERIES 5
TO PREVENT AND CONTROL AIR POLLUTION FROM
THE OPERATION OF COAL PREPARATION PLANTS AND COAL
HANDLING OPERATIONS

\$45-5-1. General.

1.1. Scope. -- The purpose of Series 5 is to prevent and control air pollution from the operation of coal preparation plants and coal handling operations.

1.2. Authority. -- W. Va. Code §16-20-5

1.3. Filing Date. --

1.4. Effective Date. --

\$45-5-2. Definitions.

2.1. "Air Pollution", 'statutory air pollution' shall have the meaning ascribed to it in ~~section two~~ article twenty [§16-20-1 et seq.], chapter sixteen of the Code of West Virginia, as amended.

2.2. "Commission" shall mean the West Virginia Air Pollution Control Commission.

2.3. ~~"Person" shall mean any and all persons, natural or artificial, including any municipal, public or private corporation organized or existing under the law of this or any other state or country and any firm, partnership, or association of whatever nature~~ means any and all persons, natural or artificial, including the State of West Virginia or any other state and all agencies or divisions thereof, any state political subdivision, the United States of America, any municipal, statutory, public or private corporation or association organized or existing under the law of this or any other state or country, and any firm, partnership or association of whatever nature.

2.4. "Handling Operation" shall mean and include but not be limited to all coal grinding, crushing, picking, screening, conveying, storing, and stockpiling operations associated with the transport, production, or preparation of coal or coal refuse, excluding coal washing, drying, or air separation operations.

2.5. "Coal Preparation" shall mean and include but not be limited to all coal washing, drying or air separation operations used for the purpose of preparing the product for marketing.

2.6. "Plant" shall mean and include all equipment and grounds utilized in an integral complex for coal preparation and associated handling.

2.7. "Fuel" shall mean a fuel such as a solid, gaseous or liquid fuel which is fired in fuel burning equipment.

2.8. "Fuel Burning Equipment" shall mean and include any chamber, apparatus, device, mechanism, stack or structure used in the process of burning fuel for the primary purpose of producing heat for a thermal drier.

2.9. "Thermal Drier" shall mean a device using fuel burning equipment for the primary purpose of reducing the moisture content of coal.

2.10. "Air Table" shall mean a device using a gaseous separating media for the primary purpose of improving the product quality.

2.11. "Air Pollution Control Equipment" shall mean any equipment used for collecting gasborne particulate matter for the purpose of preventing or reducing particulate emissions into the open air.

2.12. "Standard Cubic Foot" - One (1) cubic foot of dry gas, measured at standard conditions of 60 degrees F and 29.92 inches of mercury column.

2.13. "Stack" for the purpose of this rule shall mean but not be limited to any duct, control equipment exhaust, or similar apparatus, which vents gases containing particulate matter into the open air from operations including, but not limited to, furnaces, drying chambers, and air separation (table) operations.

2.14. "Particulate Matter" shall mean any material except uncombined water, that exists in a finely divided form as a liquid or solid.

~~2.15. "Smoke" shall mean small gasborne and airborne particles emitted from a stack in sufficient numbers to be visible.~~

~~2.16.~~ 2.15. "Ringelmann-Smoke Chart" shall be the Ringelmann's Scale for Grading the Density of Smoke published by the United States Bureau of Mines as information circular 7718, August, 1955, or any chart, recorder, indicator, device, or method which is a standardized method for the measurement of smoke density which is approved by the Commission as the equivalent of said Ringelmann Scale.

~~2.17.~~ 2.16. "Fugitive Dust" shall mean any and all particulate matter generated, which, if not confined, would be emitted directly into the open air from points other than a stack outlet.

~~2.18.~~ 2.17. "Fugitive Dust Control System" shall mean any equipment or method used to confine, collect, and dispose of fugitive dust, including but not limited to hoods, bins, duct work, fans, and air pollution control equipment.

2.18. "Opacity shall mean the degree to which emissions reduce the transmission of light and obscure the view of an object in the background."

Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in ~~section two~~ article twenty [§16-20-1 et seq.], chapter sixteen of the Code of West Virginia, as amended.

2.19. "Director" means the Director of the Division of Environmental Protection or his or her designated representative.

2.20. "Division of Environmental Protection" or "DEP" means that division of the West Virginia Department of Commerce, Labor, and Environmental Resources which is created by the provisions of West Virginia Code §22-1-1, et seq.

2.21. "Chief of Air Quality" or "Chief" means the Chief of the Office of Air Quality or his or her designated representative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of §22-1-1, et seq., of the West Virginia Code.

§45-5-3. Emission of Smoke-Particulate Matter Prohibited and Standards of Measurement.

3.1. No person shall cause, suffer, allow or permit emission of ~~smoke~~particulate matter into the open air from any stack which is as dark or darker in shade or appearance as that designated as No. 1 ~~on the Ringelmann Smoke Chart~~ or twenty (20) percent opacity, except as noted in subsection 3.2.

3.2. The provisions of subsection 3.1 of this section shall not apply to ~~smoke~~particulate matter, the shade or appearance of which is less than No. 3 ~~on the Ringelmann Smoke Chart~~ or sixty (60) percent opacity for a period or periods aggregating no more than five (5) minutes in any sixty (60)-minute period during operation.

3.3. The provisions of subsection 3.1 and 3.2 of this section shall not apply to ~~smoke~~particulate matter, the shade or appearance of which is less than No. 3 ~~on the Ringelmann Smoke Chart~~ or sixty (60) percent opacity for a period of up to eight (8) minutes in any operating day for the purposes of building a fire of operating quality in the fuel burning equipment of a thermal drier.

~~3.4. --The equivalent opacity of those Ringelmann numbers in Sub-Section 3.1 and Sub-Section 3.2 of this Section shall be used as a guide in the enforcement of Section 4 and Section 5 of this Regulation.~~

~~3.5.~~3.4. No person shall cause, suffer, allow or permit emission of ~~smoke~~particulate matter into the open air from any fugitive dust control system which is as dark or darker in shade or appearance as that designated as No. 1 ~~on the Ringelmann-Smoke-Chart~~ or twenty (20) percent ~~the equivalent~~ opacity ~~of this Ringelmann number.~~

§45-5-4. Control and Prohibition of Particulate Emissions from Coal Thermal Drying Operations of a Coal Preparation Plant.

No person shall cause, suffer, allow or permit particulate matter to be vented into the open air from any thermal drier exhaust in excess of the following limitations:

~~4-1---Until September 2, 1971, thermal driers installed on or before March 1, 1970, shall not emit more than 0.15 grains of particulate matter per standard cubic foot of exhaust gas.~~

~~4-2-4.1.~~ After September 1, 1971, Thermal driers installed on or before March 1, 1970, shall not exceed the emission limitations of the following table:

Total Plant Volumetric Flow Rate (Standard Cubic Feet Per Minute)	Maximum Allowable Particulate Loading Per Drier (Grains Per Standard Cubic Foot)
120,000 or less	0.12
172,000	0.11
245,000	0.10
351,000	0.09
500,000 and above	0.08

~~4-3-4.2.~~ Thermal driers installed after March 1, 1970, but before October 24, 1974 shall not exceed the emission limitations of the following table:

Total Plant Volumetric Flow Rate (Standard Cubic Feet Per Minute)	Maximum Allowable Particulate Loading Per Drier (Grains Per Standard Cubic Foot)
75,000 or less	0.10
111,000	0.09
163,000	0.08
240,000 and above	0.07

4.3. Thermal driers which commenced construction or modification after October 24, 1974, shall meet emission limitations set forth under series sixteen [45CSR16].

4.4. For the volumetric flow rate between any two consecutive volumetric flow rates stated in subsection ~~4-24.1~~ and subsection ~~4-34.2~~, limitations shall be as determined by linear interpolation. For the purpose hereof, the total volumetric flow rate shall be the total standard cubic feet of dry gas passed through all thermal driers at one plant location. This value shall be determined by methods which are acceptable to the ~~Commission~~ Chief of Air Quality.

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4.5. When modifications are made to plants after March 1, 1970, that result in a significant increase in the total gas volume passing through a thermal drier, said drier(s) will be subject to the emission limitations of subsection 4-34.2 even though such modifications do not include the installation of a new thermal drier(s).

4.6. No person shall circumvent this rule by adding additional gas to any drier exhaust or group of drier exhausts for the purpose of reducing the grain loading.

4.7. No person shall cause, suffer, allow or permit the exhaust gases from a thermal drier to be vented into the open air at an altitude of less than eighty (80) feet above the foundation grade of the structure containing the drier or less than ten (10) feet above the top of said structure or any adjacent structure, whichever is greater. In determining the desirable height of ~~the-above~~ a plant stack, due consideration shall be given to the local topography, meteorology, the location of nearby dwellings and public roads, ~~and--the stack emission rate, and good engineering practice as set forth in Series 20 (45CSR20).~~

4.8. ~~Any stack venting thermal drier exhaust gases into the open air shall contain flow straightening devices or a vertical run of sufficient length to establish flow patterns consistent with acceptable stack sampling procedures.~~

\$45-5-5. Control and Prohibition of Particulate Emissions From an Air Table Operation of a Coal Preparation Plant.

5.1. No person shall cause, suffer, allow or permit particulate matter to be vented into the open air from any air table exhaust in excess of 0.05 grains per dry standard cubic foot of exhaust gases.

5.2. No person shall circumvent this rule by adding additional gas to any air table exhaust or group of air table exhausts for the purpose of reducing the grain loading.

~~5.3.---Any stack venting air table exhaust gases into the open air shall contain flow straightening devices or a vertical run of sufficient length to establish flow patterns consistent with acceptable stack sampling procedures.~~

\$45-5-6. Control and Prohibition of Fugitive Dust Emissions From Coal Handling Operations and Preparation Plants.

6.1. No person shall cause, suffer, allow or permit a plant or handling operation to operate that is not equipped with a fugitive dust control system. This system shall be operated and maintained in such a manner as to minimize the emission of particulate matter into the open air.

6.2. The owner or operator of the plant or handling operation shall maintain dust control of the premises and owned, leased, or controlled access roads by

paving, or other suitable measures. Good operating practices shall be observed in relation to stockpiling, car loading, breaking, screening, and general maintenance to minimize dust generation and atmospheric entrainment.

6.3. Owners or operators of coal handling operations and preparation plants located in the area of Brooke County west of State Route 2, north of an extension of the southern boundary of Steubenville Township in Jefferson County, Ohio, and south of the Market Street Bridge shall comply with the following fugitive dust control provisions:

a. Particulate matter mass emissions shall not exceed 0.001 pounds per ton of coal input from any coal crusher or coal screening operation.

b. Visible particulate emissions shall not exceed 5% opacity from any coal crushing or screening operation or from any coal conveying system.

c. A definitive, approvable plan to control fugitive dust entrainment and emissions from vehicular traffic and activity areas including but not limited to, paved and unpaved haulroads, stockpile areas, haulway berms, and plant access roads to public streets and highways shall be submitted to the Chief and such a plan shall be embodied in a consent order approved by the Chief. For plants or handling operations in existence on the effective date of this rule, the plan shall be submitted to the Chief on or before May 1, 1993. For plants or handling operations not in existence on the effective date of this rule, the plan shall be deemed filed upon filing of an application for construction, modification, or relocation pursuant to Section 8 of this rule.

1. Provide specific scheduled treatment frequencies for all areas of vehicular activity and stockpiling using water and/or chemical dust suppressants at sufficient application rates and intensities and wet flushing and vacuum sweeping for paved surfaces so as to reduce uncontrolled fugitive dust emissions by at least 95% as determined by methods and procedures in the document, "Control of Open Fugitive Dust Sources" (EPA 450/3-88-008, September, 1988) or other measures which achieve equivalent emission reductions as determined in accordance with the reference document.

2. Provide for daily monitoring and recordkeeping and not less than monthly reporting of dust control measures to the chief, including, but not limited to water and chemical usage rates; chemical dust suppressant dilution ratios; accurate water and/or chemical flow rates or volumes through stationary or mobile dust suppression equipment and system pressures; beginning and ending times for treatment; traffic rates and types of vehicles using plant haulways, access roads and other vehicle activity areas; meteorological conditions relevant to control program requirements and equipment maintenance and downtime records.

3. Provide that no coal be unloaded from trucks which are not, upon entry to the plant or handling facility, tarped or otherwise covered to prevent dust entrainment, spillage or re-entrainment.

4. Provide that the wheels, tires and underbodies of all coal trucks be fully cleaned by an automatic washing system or equivalently effective system prior to exiting onto paved streets or highways from the premises of the plant or coal handling operation if such trucks travel over unpaved or soiled areas within the plant or coal handling operation.

5. Provide that all paved traffic areas be water flushed and vacuum or broom swept daily or alternatively be treated with water and/or chemical dust suppressants in accordance with section 6.3.c.1 of this rule.

6. Provide that all reports required under this section be certified to be true and accurate by the owner or operator prior to submission to the Chief.

7. Provide that the design of dust suppression systems or equipment, including but not limited to, number of trucks and truck tank capacity, spray bar or header volumes and pressures, spray system pump specifications, type of chemicals used, number and design of vacuum trucks maintained and other similar information be clearly incorporated.

d. The Chief may consider or incorporate exceptional provisions to the fugitive dust control plans or schedules approved pursuant to section 6.3.c. taking into consideration such conditions as rainfall, snow cover, and freezing weather.

\$45-5-7. Monitoring of Operations.

7.1. The owner or operator of a thermal drier shall install, calibrate, maintain, and continuously operate monitoring devices, as follows:

a. A monitoring device for the continuous measurement of the temperature of the gas stream at the exit of the thermal drier. The monitoring device is to be certified by the manufacturer to be accurate within plus or minus three degrees Fahrenheit ($\pm 3^{\circ}\text{F}$).

b. For thermal driers that use venturi scrubber emissions control equipment:

1. A monitoring device for the continuous measurement of the pressure loss through the venturi constriction of the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within plus or minus one inch (± 1 in.) water gage.

2. A monitoring device for the continuous measurement of the water supply pressure to the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within plus or minus five percent ($\pm 5\%$) design water supply pressure. The pressure sensor must be located close to the

water discharge point or at such point as approved by the Chief.

7.2. All monitoring devices required under subsection 7.1 are to be recalibrated at least once annually.

§45-5-7.----Registration.

7.1:--Within thirty (30) days after the effective date of this regulation, all persons owning and/or operating coal preparation plants with the State shall have, registered with the Commission, on forms to be made available by the Commission, the name of the person, company or corporation operating the plant, the address, location, county, ownership (lessee & lessor), the principal officer of the company, and any other such reasonable information as the Commission may require, including, but not necessarily limited to, capacity of the plant, type of fuel used, plant operating schedule, description and capacities of thermal driers and air tables, height and size of stacks and air pollution control equipment.

7.2:--Persons operating registered plants which are to be modified by changes in fuel burning equipment, fuel, fan capacity, drier design, air pollution control equipment, air tables, stacks or like changes which could significantly affect the emission characteristics of the plants shall file with the Commission those proposed changes not less than thirty (30) days before such changes are made.

7.3:--Within thirty (30) days after the completion of the modifications as filed under Sub-Section 7.2, the operator shall register such changes with the Commission on forms to be made available by the Commission.

7.4:--Not later than sixty (60) days prior to operation, new plants shall be registered by the owner and/or operator of such plants. Such registration shall be made on forms to be made available by the Commission and will include the name of the person, company, or ownership (lessee & lessor), the principal officer of the company, and any other such reasonable information as the Commission may require including, but not necessarily limited to, data on the capacity of the plant, type of fuel to be used, description and capacities of thermal driers and air tables, height and size of stacks and description of air pollution control equipment.

§45-5-8. Permits: Construction, Modification, and Relocation Permits.

8.1:--Plants in existence on the effective date of this regulation will be granted temporary operating permits subject to compliance with Sub-Section 7.1. These permits will be valid for as long as the Commission shall designate. When it is determined by the Commission that a plant meets the requirements of this regulation, the temporary permit will be replaced with an operating permit.

8.2:--Any plant failing to maintain the requirements of this regulation shall, at the discretion of the Commission, have the permit revoked.

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~~8.3.--When permits are revoked, the Commission will reissue permits when such changes as necessary to meet the requirements of this regulation are made.~~

~~8.4.--New plants will be granted temporary operating permits provided they comply with Sub-Section 7.4.~~

~~8.5.--Subject to the provisions of Sub-Section 7.1, plants operating without a permit will be in violation of this regulation.~~

~~8.6.--The possession of a permit by any person shall in no way relieve the holder thereof of his obligation to comply with the provisions of this regulation.~~

8.1. No person shall construct, modify, or relocate any coal preparation plant or coal handling operation without first obtaining a permit in accordance with the provisions of article twenty [§16-20-1 et seq.], chapter sixteen of the Code of West Virginia, as amended, and the Commission rules for review and permitting of new or modified sources. The terms "construction", "modification" and "relocation" shall have the meaning ascribed to them in 45CSR13.

§45-5-9. Operating Permits.

9.1. All owners and operators of coal preparation plants and coal handling operations in existence on the effective date of this rule shall submit a complete application for an operating permit to the Chief not later than ninety (90) days from the effective date of this rule.

The operating permit application shall contain sufficient information as in the judgement of the Chief is necessary to enable him to determine whether the preparation plant or coal handling operation and air pollution control equipment or measures comply with this rule and other applicable rules. Information to be furnished in the permit application shall include but not be limited to:

a. A description of the nature, location, design capacity and typical and maximum operating schedules of the facility, including specifications and drawings showing its design and plant lay-out; and

b. A detailed description as to what systems of continuous emission reduction are employed by the facility, emission estimates, and any other information as necessary to determine the required emissions control technology or measures that must be applied.

9.2. It shall be unlawful for any person to operate a coal preparation plant or coal handling operation after the ninetieth (90th) day following the effective date of this rule if a completed permit application has not been submitted to the Chief in accordance with this section.

9.3. Any owner or operator of a coal preparation plant or coal handling operation which is constructed, modified, or relocated after the effective date of this rule pursuant to a preconstruction permit as provided under Section 8 of this rule, shall submit a completed application for a new operating permit, or an amendment to an existing permit in the case of a modification, within sixty (60) days of the date of start-up of such new facility or modification.

9.4. No owner or operator of a coal preparation plant or coal handling operation shall be deemed to be in violation of this Section during the pendency of the Chief's operating permit review period, provided that such owner or operator has submitted a complete operating permit application in accordance with this Section and is otherwise in compliance with the Code and the rules promulgated thereunder.

9.5. If, after any investigation made by the Chief, or his designated representative, the Chief shall be of the opinion that an operating permit holder is violating the provisions of this rule, the Chief, may issue an order suspending or revoking the operating permit in the manner provided under Code §16-20-6. Such order shall be considered a cease and desist order for purposes of administrative and judicial review. Operating permits revoked or suspended may be renewed by the Director upon a showing of compliance with the provisions of this rule, the permit, the Code, and all other rules.

9.6. The possession of a permit by any person shall in no way relieve the holder thereof of the obligation to comply with the provisions of this or any other rule or Code §16-20.

9.7. Upon determination by the Chief that the applicant for a permit for a coal preparation plant or coal handling operation may violate applicable emissions standards or other applicable rules or may cause violations of ambient air standards the Chief shall issue an order denying an operating permit for such facility in the manner provided under Code §16-20-6. Such order shall be considered a cease and desist order for purposes of administrative and judicial review.

9.8. The Chief shall not issue an operating permit to any person who has not paid in full all fees required under 45CSR22 or any other applicable fee rule. Failure to pay applicable fees shall be cause for permit denial, suspension or revocation.

9.9. Operating permits issued under this rule shall be continuous unless revised, renewed, revoked, suspended, or otherwise changed under the provisions of this rule or any other applicable legislative rule.

§45-5-9-§45-5-10. Reports and Testing.

9-1-10.1. At such reasonable times as the ~~Director~~Chief may designate, the owner or operator of a coal preparation plant may be required to conduct or have conducted stack tests to determine the dust loading in exhaust gases and mass emission rates of particulate matter. ~~when the Director has reason to believe that the stack emission limitation is being violated.~~ Such tests shall be conducted in such

~~manner as the Director may specify and be filed on forms, and in a manner acceptable to the Director. The Director, or his duly authorized representative, may at his option witness or conduct such stack tests.~~ All tests to determine compliance with exhaust gas dust concentrations and particulate matter mass emission rates shall be conducted in accordance with Methods 1-5 of 40 CFR 60, Appendix A as promulgated by USEPA on July 1, 1991 provided that all compliance tests must consist of not less than three (3) test runs, test run duration shall not be less than sixty (60) minutes, and not less than thirty (30) standard cubic feet of exhaust gas must be sampled during each test run. Should the ~~Director~~ Chief exercise his option to conduct such tests, the operator will provide all necessary sampling connections and sampling ports to be located in such manner as the ~~Director~~ Chief may require, power for test equipment, and the required safety equipment such as scaffolding, railings, ladders, etc., to comply with generally accepted good safety practices.

9-2-10.2. The ~~Director~~ Chief, 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 9-1-10.1.

10.3. The owner or operator shall submit a test protocol for the Chief's approval not less than thirty (30) days prior to any test to determine compliance with this rule and shall provide at least fifteen (15) days notice of all compliance tests to the Chief.

10.4. Tests to determine compliance with the visible emission limitations of sections 3 and 6 shall be conducted by certified visible emission observers in accordance with Method 9 of 40 CFR 60, Appendix A as promulgated by USEPA on July 1, 1991, and as follows:

a. In determining compliance with Sections 3.1 and 3.4, not less than twenty-four (24) consecutive visible emissions observations at 15 second intervals shall be recorded and averaged.

b. In determining a violation of Section 3.2, the observer shall record not less than 24 nor more than 240 visible emissions observations at 15 second intervals for each test and shall total the number of observations exceeding 20% opacity. More than 20 consecutive or nonconsecutive observations exceeding 20% opacity recorded within any 60 minute period shall constitute a violation except as provided in Section 10.4.c.

c. More than 32 consecutive or nonconsecutive visible emissions observations during any period or periods within one day in which an owner or operator of a thermal dryer is initiating and stabilizing operating combustion conditions in the furnace the thermal dryer shall constitute a violation of Section 3.3 of this rule.

10.5. Any stack venting thermal drier exhaust gases and/or air table exhaust gases or exhaust gases or air from any air pollution control device shall include straight runs of sufficient length to establish flow patterns consistent with

acceptable stack sampling procedures. Flow straightening devices shall be required where cyclonic gas flow would exist in the absence of such devices.

§45-5-10-§45-5-11. Variance.

~~10.1.- If a plant operating under a temporary permit does not meet the requirements of this regulation, the operator of the plant shall develop and submit to the Commission an acceptable control program to meet these requirements.- This control program shall be submitted upon the request of and within such time as shall be fixed by the Commission; and after said program has been approved by the Commission, the owner or operator of the plant will not be in violation of this regulation as long as said program is observed.~~

~~10.2-11.1. Due to unavoidable malfunctions of equipment or nonavailability of repair parts, emissions exceeding those provided for in this rule may be permitted by the Commission upon specific application to the Commission Chief, upon specific application to the Chief, for periods not to exceed ten (10) days. Such application shall be made within twenty-four (24) hours of the malfunction or within such other time period as the Commission may specify.~~

11.2. In the case of major equipment failure, an additional time period may be granted by the Chief provided a corrective program is submitted to the Chief by the applicant. Upon determination by the Chief that a variance beyond ten (10) days should be granted, the Chief shall cause to be published in the State Register and within the county wherein the source lies and all contiguous West Virginia Counties a Class I legal advertisement of notice of intent to grant such a variance. Within fifteen (15) days of the publication of the later of either the State Register notice or Class I legal advertisement notice, any person whose interest may be affected by the granting of such variance may request a conference with the Chief to show cause why the variance should not be granted. After such conference or, if no conference is requested, fifteen (15) days after publication of the later of either the State Register notice or Class I legal advertisement notice, the Chief may issue an order granting such variance.

11.3. Any person, whose interest may be affected by the granting of a variance in excess of ten (10) days and who requests a conference with the Chief pursuant to the provisions of 11.2 of this section, may appeal an order of variance to the Commission in the same manner as appeals of cease and desist orders under the provisions of W. Va. Code §18-20-6.

§45-5-12. Transfer of Permits.

12.1. Any person holding a valid permit may request that the Chief transfer the permit to another person providing the following conditions are met:

a. The permit holder describes, in writing, the reasons for or circumstances of the transfer and certifies that the facility for which the permit

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pertains is in compliance with all permits issued by the Chief and all applicable regulations of the Commission.

b. The transferee identifies and acknowledges, in writing, that it accepts and will comply with all permits issued by the Chief and will comply with all applicable rules.

c. The permit holder or transferee pays, at the time of the request for transfer, a transfer fee of \$200 payable to the West Virginia Air Pollution Control Commission Fund. Such payment satisfies the requirement of Section 4.2 of 45CSR22.

SENATE BILL NO. ~~172~~

(By Senator Manchin)

[Introduced March 1, 1993; referred to the
Committee on Energy, Industry and Mining; and
then to the Committee on the Judiciary.]

8

9

10 A BILL to amend and reenact section one, article three, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 air pollution control commission to promulgate legislative
14 rules relating to the prevention and control of air pollution
15 from the operation of coal preparation plants and coal
16 handling operations.

17 Be it enacted by the Legislature of West Virginia:

18 That section one, article three, chapter sixty-four of the
19 code of West Virginia, one thousand nine hundred thirty-one, as
20 amended, be amended and reenacted, to read as follows:

21 ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND
22 ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

23 §64-3-1. Air pollution control commission.

1 (a) The legislative rules filed in the state register on the
2 thirteenth day of August, one thousand nine hundred eighty-two,
3 relating to the air pollution control commission (series VII),
4 are authorized.

5 (b) The legislative rules filed in the state register on the
6 thirteenth day of August, one thousand nine hundred eighty-two,
7 relating to the air pollution control commission (series XIX),
8 are authorized.

9 (c) The legislative rules filed in the state register on the
10 sixteenth day of November, one thousand nine hundred
11 eighty-three, relating to the air pollution control commission
12 (emission standards for hazardous air pollutants) (series XV),
13 are authorized.

14 (d) The legislative rules filed in the state register on the
15 sixteenth day of November, one thousand nine hundred
16 eighty-three, relating to the air pollution control commission
17 (standards of performance for new stationary sources) (series
18 XVI), are authorized.

19 (e) The legislative rules filed in the state register on the
20 sixth day of January, one thousand nine hundred eighty-four,
21 relating to the air pollution control commission (to prevent and
22 control air pollution from hazardous waste treatment, storage or
23 disposal facilities)(series XXV), are authorized with the
24 amendments set forth below:

1 Page 3, §1.06, change the § title from "Enforcement" to
2 "Procedure"; place an "(a)" in front of the existing paragraph
3 and add the following:

4 "(b) Permit applications filed pursuant to this regulation
5 shall be processed in accordance with the permitting procedures
6 as set forth in code §20-5E of this regulation. Permit
7 procedures set forth in code §16-20 and any other regulation of
8 this commission are not applicable to any permit application
9 filed pursuant to this regulation."

10 Such rules shall also include a section which shall read as
11 follows:

12 "The commission shall report to the legislative rule-making
13 review committee as required by that committee, but in no event
14 later than the first day of the regular session of the
15 Legislature in the year one thousand nine hundred eighty-five.
16 Such report shall include information regarding the commission's
17 data gathering efforts, the development of compliance programs,
18 the progress in implementation, and such other matters as the
19 committee may require, pertaining to the regulations hereby
20 authorized."

21 (f) The legislative rules filed in the state register on the
22 ninth day of January, one thousand nine hundred eighty-four,
23 relating to the air pollution control commission (permits for
24 construction and modification of stationary sources of air

1 pollution for the prevention of significant deterioration)
2 (series XIV), are authorized.

3 (g) The legislative rules filed in the state register on the
4 thirtieth day of December, one thousand nine hundred
5 eighty-eight, modified by the air pollution control commission to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-third
8 day of February, one thousand nine hundred eighty-nine, relating
9 to the air pollution control commission (prevention and control
10 of air pollution from hazardous waste treatment, storage or
11 disposal facilities), are authorized.

12 (h) The legislative rules filed in the state register on the
13 thirtieth day of December, one thousand nine hundred
14 eighty-eight, modified by the air pollution control commission to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the twenty-third
17 day of February, one thousand nine hundred eighty-nine, relating
18 to the air pollution control commission (good engineering
19 practice as applicable to stack heights), are authorized.

20 (i) The legislative rules filed in the state register on the
21 thirtieth day of December, one thousand nine hundred
22 eighty-eight, modified by the air pollution control commission to
23 meet the objections of the legislative rule-making review
24 committee and refiled in the state register on the twenty-third
25 day of February, one thousand nine hundred eighty-nine, relating

1 to the air pollution control commission (TP-2, compliance test
2 procedures for regulation 2 -- to prevent and control particulate
3 air pollution from combustion of fuel in indirect heat
4 exchangers), are authorized.

5 (j) The legislative rules filed in the state register on the
6 sixth day of September, one thousand nine hundred eighty-nine,
7 modified by the air pollution control commission to meet the
8 objections of the legislative rule-making review committee and
9 refiled in the state register on the tenth day of January, one
10 thousand nine hundred ninety, relating to the air pollution
11 control commission (ambient air quality standards for sulfur
12 oxides and particulate matter), are authorized.

13 (k) The legislative rules filed in the state register on the
14 sixth day of September, one thousand nine hundred eighty-nine,
15 modified by the air pollution control commission to meet the
16 objections of the legislative rule-making review committee and
17 refiled in the state register on the tenth day of January, one
18 thousand nine hundred ninety, relating to the air pollution
19 control commission (prevention of air pollution emergency
20 episodes), are authorized.

21 (l) The legislative rules filed in the state register on the
22 sixth day of September, one thousand nine hundred eighty-nine,
23 modified by the air pollution control commission to meet the
24 objections of the legislative rule-making review committee and
25 refiled in the state register on the tenth day of January, one

1 thousand nine hundred ninety, relating to the air pollution
2 control commission (permits for construction and major
3 modification of major stationary sources of air pollution for the
4 prevention of significant deterioration), are authorized.

5 (m) The legislative rules filed in the state register on the
6 sixth day of September, one thousand nine hundred eighty-nine,
7 relating to the air pollution control commission (standards of
8 performance for new stationary sources), are authorized.

9 (n) The legislative rules filed in the state register on the
10 sixth day of September, one thousand nine hundred eighty-nine,
11 relating to the air pollution control commission (emission
12 standards for hazardous air pollutants), are authorized.

13 (o) The legislative rules filed in the state register on the
14 sixteenth day of October, one thousand nine hundred eighty-nine,
15 modified by the air pollution control commission to meet the
16 objections of the legislative rule-making review committee and
17 refiled in the state register on the tenth day of January, one
18 thousand nine hundred ninety, relating to the air pollution
19 control commission (prevention and control of emissions of toxic
20 air pollutants), are authorized.

21 (p) The legislative rules filed in the state register on the
22 tenth day of August, one thousand nine hundred ninety, relating
23 to the air pollution control commission (prevention and control
24 of air pollution from the emission of volatile organic compounds
25 from bulk gasoline terminals), are authorized.

1 (q) The legislative rules filed in the state register on the
2 thirteenth day of August, one thousand nine hundred ninety,
3 modified by the air pollution control commission to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the fifteenth day of November,
6 one thousand nine hundred ninety, relating to the air pollution
7 control commission (air quality management fee program), are
8 authorized.

9 (r) The legislative rules filed in the state register on the
10 tenth day of August, one thousand nine hundred ninety, relating
11 to the air pollution control commission (prevention and control
12 of air pollution from the emission of volatile organic compounds
13 from the storage of petroleum liquids in fixed roof tanks), are
14 authorized.

15 (s) The legislative rules filed in the state register on the
16 tenth day of August, one thousand nine hundred ninety, relating
17 to the air pollution control commission (prevention and control
18 of air pollution from the emission of volatile organic compounds
19 from petroleum refinery sources), are authorized.

20 (t) The legislative rules filed in the state register on the
21 twenty-eighth day of August, one thousand nine hundred ninety-
22 two, modified by the air pollution control commission to meet the
23 objections of the legislative rule-making review committee and
24 refiled in the state register on the nineteenth day of February,
25 one thousand nine hundred ninety-three, relating to the air

1 pollution control commission (regulations to prevent and control
2 of air pollution from the operation of coal preparation plants
3 and coal handling operations), are authorized.

4

5 NOTE: The purpose of this bill is to authorize the Air
6 Pollution Control Commission to promulgate legislative rules
7 relating to the prevention and control of air pollution from the
8 operation of coal preparation plants and coal handling
9 operations.

10

11 Strike-throughs indicate language that would be stricken from
12 the present law, and underscoring indicates new language that
13 would be added.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

TO: Randy Suiter

AGENCY: APCC

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: December 20, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 5 TITLE: 45 APCC

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Danna J. Maurice

TITLE OF PERSON SIGNING: Administrative Secretary

DATE: April 6, 1994

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

April 6, 1994

Ms. Judy Cooper
Administrative Law Division
Secretary of State's Office
Building 1, Suite 157-K
Charleston, WV 25305-0770

Dear Ms. Cooper:

Enclosed is 45CSR5 which has been proofed and needs correcting. For the changes to be consistent throughout the rule, please note the following:

°The words "shall mean" after most definitions has been changed where applicable to "means". This change was made to accommodate recommendations made by the LRMRC.

°Throughout the rule the word "regulation" has been changed to "rule", this is also to accommodate recommendations made by the LRMRC.

°To be more consistent throughout the rule, as per your change, the word "Sub-section" will be a capital "S" on the word "Sub", hyphen, lower case "s" on the word "section".

°The word "Section" will be capitalized when it is used in conjunction with the particular Section.

°The word "Chief" will be capitalized throughout the rule.

There are only a few changes other than those listed above. I have changed our rule accordingly.

I apologize for the long delay in returning this rule for the above changes and will return the remaining rules as soon as possible.

Sincerely yours,

Tamra L. Mowrer
Administrative Secretary

Enclosure

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
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JUDY COOPER
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DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

May 28, 1993

Randy Suter
Air Pollution Control Comm.
1558 Washington St., E
Charleston, WV 25305

HB 110 authorizing, Title 45, Series 5, Prevent & Control Air Pollution from the Operation of Coal Preparation Plants & Coal Handling Operations, passed the Legislature on May 26, 1993. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 110, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office. Authorization for your legislative rule is cited in **HB 110** section 64-3-1a. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, PLEASE SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division