

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

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

AGENCY: Department of Environmental Protection-Division of Air Quality TITLE NUMBER: 45

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15

TITLE OF RULE BEING AMENDED: "Emission Standards for Hazardous Air Pollutants

Pursuant to 40 CFR Part 61"

IF NO, SERIES NUMBER OF 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) HB2663

SECTION 64-3-1(a), PASSED ON April 14, 2001

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2001


Authorized Signature

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

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SERIES 15
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
PURSUANT TO 40 CFR PART 61

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§45-15-1. General.

1.1. Scope. -- This rule adopts emission standards for hazardous air pollutants promulgated by the United States Environmental Protection Agency pursuant to section 112 of the federal Clean Air Act, as amended (CAA). It is the intent of the Director to adopt these standards by reference. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to such standards.

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

1.3. Filing Date. -- June 8, 2001.

1.4. Effective Date. -- July 1, 2001.

1.5. Incorporation by Reference. -- Federal Counterpart Regulation. The Director has determined that a federal counterpart regulation exists and in accordance with the Director's recommendation, with limited exception, this rule incorporates by reference, 40 CFR Part 61, effective July 1, 1999, as amended by the Federal Register through June 1, 2000.

1.6. Former Rules. -- This legislative rule amends 45CSR15 "Emission Standards For Hazardous Air Pollutants Pursuant to 40 CFR Part 61" which was filed April 28, 1995, and which became effective May 1, 1995.

§45-15-2. Requirements.

2.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, modified, or operated any National Emission

Standards for Hazardous Air Pollutants (NESHAP) source which results, or will result, in a violation of this rule.

§45-15-3. Definitions.

3.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

3.2. "Clean Air Act" ("CAA") means 42 U.S.C. §§7401 et seq.

3.3. "Director" means the director of the division of environmental protection or such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

3.4. "Hazardous air pollutant" means any air pollutant listed pursuant to 40 CFR Part 61.01(a).

§45-15-4. Adoption of Standards.

4.1. Standards. -- The Director hereby adopts and incorporates by reference the provisions of 40 CFR Part 61 including any reference methods, performance specifications and other test methods which are appended to such standards and contained in 40 CFR Part 61, effective July 1, 1999, as amended by the Federal Register through June 1, 2000, for the purposes of implementing a program for emission standards for hazardous air pollutants, except as follows:

4.1.a. 40 CFR Part 61.16 is amended to provide that information shall be available to the public in accordance with W. Va. Code §§22-5-1 et seq., W. Va. Code §§29B-1-1 et seq., and 45CSR31.

4.1.b. Subparts B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of 40 CFR Part 61 shall be excluded.

§45-15-5. Director.

5.1. Any and all references in 40 CFR Part 61 to the "Administrator" are amended to be the "Director" except as follows:

5.1.a. where the federal regulations specifically provide that the Administrator shall retain authority and not transfer such authority to the State;

5.1.b. where provisions occur which refer to:

5.1.b.1. alternate means of emission limitations;

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

5.1.b.5. alternate monitoring methods;

5.1.b.6. waivers/adjustments to recordkeeping and reporting;

5.1.b.7. emissions averaging; or

5.1.b.8. applicability determinations;

or

5.1.c. where the context of the regulation clearly requires otherwise.

§45-15-6. Permits.

6.1. Nothing contained in this adoption by

reference shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall in any way be limited or inapplicable.

§45-15-7. Inconsistency Between Rules.

7.1. In the event of any inconsistency between this rule and any other existing rule of the Director, 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.