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OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

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

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

May 19, 1999

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

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

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office as a final rule authorized by HB 2533, signed by Governor Underwood April 2, 1999.

Your cooperation in this regard is very much appreciated. If you should have any questions or require additional information, please feel free to contact Carrie Chambers in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp
Karen Watson
Carrie Chambers

LEGISLATIVE HISTORY ABSTRACT

45CSR16

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60

Bureau of Environment
Division of Environmental Protection
Office of Air Quality
House Bill 2533 Section 64-3-1(b)

06/16/98	Filed Notice of Public Hearing with Secretary of State.
06/16/98	Initial Filing with Legislative Rule-Making Review Committee.
07/21/98	Held Public Hearing.
07/21/98	End of Public Comment Period.
07/31/98	Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
12/15/98	Rule Approved by Legislative Rule-Making Review Committee with Modifications.
01/05/99	Modified Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
03/21/99	Passed the West Virginia Legislature.
04/02/99	Approved by the Governor.
05/20/99	Rule Final Filed with Secretary of State.
06/01/99	Effective Date of Rule.

FILED

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

MAY 20 12 35 PM '99

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

SERIES 16
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
PURSUANT TO 40 CFR PART 60

§45-16-1. General.

1.1. Scope. -- This rule adopts standards of performance for new stationary sources promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. 7411(b) [C.A.A. §111(b)] of the federal Clean Air Act, as amended. 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. -- May 20, 1999.

1.4. Effective Date. -- June 1, 1999.

1.5. Incorporation By Reference -- Federal Counterpart Regulation. The Director has determined that a federal counterpart rule exists, in accordance with the Director's recommendation, and with limited exception, this rule incorporates by reference 40 CFR Part 60, effective July 1, 1997, as amended by the Federal Register through June 1, 1998.

§45-16-2. Requirements.

2.1. No person may construct, reconstruct, modify, or operate or cause to be constructed, modified, or operated a New Source Performance Standard (NSPS) source which results or will result in violations of this rule.

§45-16-3. Adoption of Standards.

3.1. Standards. -- The Director hereby adopts

and incorporates by reference the provisions of 40 CFR Part 60 including any reference methods, performance specifications and other test methods which are appended to such standards and contained in 40 CFR Part 60, effective July 1, 1997, as amended by the Federal Register through June 1, 1998, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

3.1.a. Part 60.9 is amended to provide that information shall be available to the public in accordance with W. Va. Code §§22-5-1 et seq., 29B-1-1 et seq., and 45CSR31.

3.1.b. Sub-parts B, C, Ca, Cb, Cc, Ce, Ea, Ec, and WWW of 40 CFR Part 60 shall be excluded.

§45-16-4. Director.

4.1. Any and all references in said 40 CFR Part 60 to the "Administrator" of the United States Environmental Protection Agency are amended to be the "Director" of the West Virginia Division of Environmental Protection except as follows:

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

4.1.b. where provisions occur which refer to:

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

4.1.b.2. alternate control technologies;

4.1.b.3. innovative technology
waivers;

4.1.b.4. alternate test methods;

4.1.b.5. alternate monitoring
methods;

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

4.1.b.7. emissions averaging;

4.1.b.8. a p p l i c a b i l i t y
determinations; or

4.1.b.9. the authority to require
testing under Section 114 of the Clean Air Act, as
amended; or

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

§45-16-5. Permits.

5.1. Nothing contained in this adoption by
reference shall be construed or inferred to mean
that permit requirements in accordance with
applicable rules shall be in any way be limited or
inapplicable.

§45-16-6. Inconsistency Between Rules.

6.1. In the event of any inconsistency between
this rule and any other existing 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.

ETSP

1 Bill-DEP

2 H. B. 2523

3

4

(By Delegates Hunt, Linch, Compton, Faircloth,
Jenkins and Riggs)

5

6

[Introduced February 1, 1999; referred to the
Committee on the Judiciary.]

7

8

9

10

A BILL to amend and reenact section one, article three,
chapter sixty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to authorizing the division of environmental
protection to promulgate a legislative rule relating
to standards of performance for new stationary
sources.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO
PROMULGATE LEGISLATIVE RULES.**

252

1 §64-3-1. Division of environmental protection.

2 (a) The legislative rule filed in the state register
3 on the first day of August, one thousand nine hundred
4 ninety-seven, authorized under the authority of section
5 seven, article five, chapter twenty-two, of this code,
6 relating to the division of environmental protection (acid
7 rain provisions and permits, 45 CSR 33), is authorized.

8 (b) The legislative rule filed in the state register
9 on the first day of August, one thousand nine hundred
10 ninety-seven, authorized under the authority of section
11 seven, article five, chapter twenty-two of this code,
12 relating to the division of environmental protection
13 (emission standards for hazardous air pollutants pursuant
14 to 40 CFR Part 63, 45 CSR 34), is authorized.

15 (c) The legislative rule filed in the state register
16 on the first day of August, one thousand nine hundred
17 ninety-seven, authorized under the authority of section
18 six, article eighteen, chapter twenty-two of this code,
19 relating to the division of environmental protection
20 (hazardous waste management, 33 CSR 20), is authorized.

21 (d) The legislative rule filed in the state register
22 on the fourteenth day of August, one thousand nine hundred
23 ninety-seven, authorized under the authority of section

1 four, article five, chapter twenty-two, of this code,
2 relating to the division of environmental protection(to
3 prevent and control particulate air pollution from
4 manufacturing process operations, 45 CSR 7) is authorized.

5 (e) The legislative rule filed in the state register
6 on the first day of August, one thousand nine hundred
7 ninety-seven, authorized under the authority of section
8 four, article five, chapter twenty-two, of this code,
9 modified by the division of environmental protection to
10 meet the objections of the legislative rule-making review
11 committee and refiled in the state register on the seventh
12 day of January, one thousand nine hundred ninety-eight,
13 relating to the division of environmental protection (to
14 prevent and control of emissions from municipal solid waste
15 landfills, 45 CSR 23), is authorized.

16 (f) The legislative rule filed in the state register
17 on the first day of August, one thousand nine hundred
18 ninety-seven, authorized under the authority of section
19 seven, article one, chapter twenty-two of this code,
20 modified by the division of environmental protection to
21 meet the objections of the legislative rule-making review
22 committee and refiled in the state register on the second
23 day of December, one thousand nine hundred ninety-

1 seven, relating to the division of environmental protection
2 (to prevent and control air pollution from hazardous waste
3 treatment, storage or disposal facilities, 45 CSR 25), is
4 authorized.

5 (g) The legislative rule filed in the state register
6 on the first day of August, one thousand nine hundred
7 ninety-seven, authorized under the authority of section
8 three, article one, chapter twenty-two of this code,
9 modified by the division of environmental protection to
10 meet the objections of the legislative rule-making review
11 committee and refiled in the state register on the fifth
12 day of January, one thousand nine hundred ninety-eight,
13 relating to the division of environmental protection
14 (surface mining and reclamation regulations, 38 CSR 2), is
15 authorized.

16 (h) The legislative rule filed in the state register
17 on the thirty-first day of July, one thousand nine hundred
18 ninety-eight, authorized under the authority of section
19 one, article five, chapter twenty-two, of this code,
20 modified by the division of environmental protection to
21 meet the objections of the legislative rule-making review
22 committee and refiled in the state register on the fifth
23 day of January, one thousand nine hundred ninety-nine,

1 relating to the division of environmental protection
2 (standards of performance for new stationary sources, 45
3 CSR 16), is authorized.

4

5 NOTE: The purpose of this bill is to authorize the
6 Division of Environmental Protection to promulgate a
7 legislative rule relating to Standards of Performance for
8 New Stationary Sources.

9

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