

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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MAY 30 1 23 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR16

TITLE OF RULE BEING AMENDED: Standards of Performance for New Stationary
Sources Pursuant to 40 CFR Part 60

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

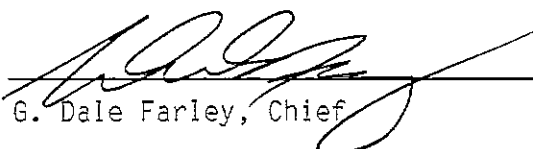
TITLE OF RULE BEING PROPOSED:

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

AUTHORIZATION IS CITED IN (house or senate bill number) H.B. 2333

SECTION 64-3-1(b), PASSED ON April 12, 1997

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: June 1, 1997


G. Dale Farley, Chief

FILED

45CSR16

MAY 30 | 23 PM '97

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

OFFICE OF WEST VIRGINIA
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 under 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 30, 1997

1.4. Effective Date. -- June 1, 1997

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.

§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. -- Standards of performance for new stationary sources including associated reference methods, performance specifications and other test methods which are appended to such standards 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, as of June 15, 1996, and contained in 40 CFR Part 60 are hereby adopted in their entirety and incorporated herein by reference, 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., W. Va. Code §§29B-1-1 et seq., and 45CSR31.

45CSR16

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

§45-16-4. Director.

4.1. Any and all references in said 40 CFR 60 to the "Administrator" is amended to be the "Director" of the West Virginia Division of Environmental Protection" except in the following references which such references shall remain "Administrator of the United States Environmental Protection Agency":

4.1.a. Part 60.2.

4.1.b. Part 60.4.

4.1.c. Part 60.8(b)(2).

4.1.d. Part 60.8(b)(3).

4.1.e. That sentence of part 60.8(b) which deals with the authority of the Administrator to require testing under Section 114 of the Clean Air Act, as amended.

4.1.f. Part 60.11(e).

4.1.g. Part 60.13(c).

4.1.h. Part 60.45(a).

4.1.i. Part 60.194(d).

4.1.j. Part 60.332(a).

4.1.k. Part 60.335(f)(1).

4.1.l. Part 60.335(f)(1).

4.1.m. Part 60.33b(d)(2)

4.1.n. Part 60.39b(b)

4.1.o. Part 60.50b(n)

4.1.p. Part 60.51b

4.1.q. Part 60.53b(b)(2)

4.1.r. Part 60.53b(c)(2)

4.1.s. Part 60.58b(e)(14)

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4.1.t. Part 60.58b(h) (12)

§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.



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

JOHN E. CAFFREY
COMMISSIONER

May 23, 1997

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

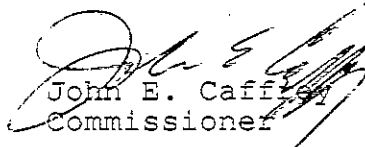
RE: 45CSR16 - "Standards of Performance For New Stationary
Sources Pursuant to 40 CFR Part 60"

Dear Ms. Cooper:

This is to advise you that I am giving approval for final filing and adoption of the above-referenced rule with your office.

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

Sincerely yours,


John E. Caffrey
Commissioner

JEC/tlm

Attachments

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 2333 Section 64-3-1(b)

07/10/96	Filed Notice of Public Hearing with Secretary of State.
07/10/96	Initial Filing with Legislative Rule-Making Review Committee.
08/13/96	Held Public Hearing.
08/13/96	End of Public Comment Period.
08/29/96	Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
11/20/96	Rule Approved by Legislative Rule-Making Review Committee.
04/12/97	Passed the West Virginia Legislature.
05/02/97	Approved by the Governor.
05/30/97	Rule Final Filed with Secretary of State.
06/01/97	Effective Date of Rule.

E1E6

H. B. 2313

1 Bill-DEP, Stds of Performance

2

(By Delegate(s) Douglas, Hunt, Compton,
Faircloth, Lynch and Riggs)

3

4

5

[Introduced March 3, 1997; referred to the
Committee on the Judiciary.]

6

7

8

9

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate a legislative rule relating
15 to standards of performance for new stationary sources
16 pursuant to 40 CFR Part 60.

17 Be it enacted by the Legislature of West Virginia:

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

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

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

2 (a) The legislative ~~rules~~ rule filed in the state
3 register on twenty-eighth day of July, one thousand nine
4 hundred ninety-five, authorized under the authority of
5 section four, article five, chapter twenty-two of this
6 code, relating to the division of environmental protection
7 (emission standards for hazardous air pollutants pursuant
8 to 40 CFR Part 63, 45 CSR 34), ~~are~~ is authorized.

9 (b) The legislative ~~rules~~ rule filed in the state
10 register on the twenty-eighth day of July, one thousand
11 nine hundred ninety-five, authorized under the authority of
12 section four, article five, chapter twenty-two of this
13 code, modified by the division of environmental protection
14 to meet the objections of the legislative rule-making
15 review committee and refiled in the state register on the
16 twenty-seventh day of October, one thousand nine hundred
17 ninety-five, relating to the division of environmental
18 protection (to prevent and control air pollution from
19 hazardous waste treatment, storage or disposal facilities,
20 45 CSR 25), ~~are~~ is authorized.

21 (c) The legislative ~~rules~~ rule filed in the state
22 register on the twenty-eighth day of July, one thousand
23 nine hundred ninety-five, authorized under the authority of

1 section four, article five, chapter twenty-two of this
2 code, relating to the division of environmental protection
3 (acid rain provisions and permits, 45 CSR 33), ~~are~~ is
4 authorized.

5 (d) The legislative ~~rules~~ rule filed in the state
6 register on the thirty-first day of July, one thousand nine
7 hundred ninety-five, authorized under the authority of
8 section six, article seventeen, chapter twenty-two of this
9 code, modified by the division of environmental protection
10 to meet the objections of the legislative rule-making
11 review committee and refiled in the state register on the
12 eighteenth day of January, one thousand nine hundred
13 ninety-six, relating to the division of environmental
14 protection (underground storage tanks, 47 CSR 36), ~~are~~ is
15 authorized.

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

1 ninety-six, relating to the division of environmental
2 protection (hazardous waste management regulations, 47 CSR
3 35), ~~are~~ is authorized.

4 (f) The legislative ~~rules~~ rule filed in the state
5 register on the thirty-first day of July, one thousand nine
6 hundred ninety-five, authorized under the authority of
7 section four, article three, chapter twenty-two of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 twenty-third day of January, one thousand nine hundred
12 ninety-six, relating to the division of environmental
13 protection (surface mining and reclamation regulations, 38
14 CSR 2), ~~are~~ is authorized with the following amendments:

15 "On page 64, section 3.27, after the word 'Director'
16 by striking out the word 'may' and inserting in lieu
17 thereof the word 'shall';

18 On page 64, section 3.27, after the word 'completed'
19 by striking out the remainder of the first paragraph and
20 inserting in lieu thereof the following words:

21 'and reclamation activities are ongoing.'

22 On page 156, section 11.6(c)(6)(A) after the word
23 'operations' by striking out the words 'within five (5)

1 years of the date of SMA approval,';

2 On page 156, section 11.6(c)(6)(B) after the word
3 '(95-87)' by striking out the words 'within five (5) years
4 of the date of SMA approval,';

5 On page 157, section 11.6(c)(6)(C) after the word
6 'State' by striking out the words 'within five (5) years of
7 the date of SMA approval,';

8 On page 163, section 11.6(d)(6)(A), after the word
9 'applicant' by striking out the words 'within five (5)
10 years of the date of SMA approval,';

11 On page 164, section 11.6(d)(6)(B), after the word
12 '95-87' by striking out the words 'within five (5) years of
13 the date of SMA approval,';

14 On page 164, section 11.6(d)(6)(C), after the word
15 'wetlands' by striking out the words 'within five (5) years
16 of the date of SMA approval,';

17 On page 169, section 11.6(e)(5)(A), after the word
18 '95-87' by striking out the words 'within five (5) years of
19 the date of SMA approval,';

20 On page 169, section 11.6(e)(5)(B), after the word
21 'wetlands' by striking out the words 'within five (5) years
22 of the date of SMA approval,';

23 On page 175, section 11.6(f)(5)(A), after the word

1 '95-87', by striking out the words 'within five (5) years
2 of the date of SMA approval,';

3 On page 175, section 11.6(f)(5)(B), after the word
4 'enhancement' by striking out the words 'of wetlands within
5 five (5) years of the date of SMA approval,'.

6 On page 178, section 12.2 subsection (e) by striking
7 12.2.e in its entirety and inserting in lieu thereof the
8 following:

9 'Notwithstanding any other provisions of this rule, no
10 bond release or reduction will be granted if, at the time,
11 water discharged from or affected by the operation requires
12 chemical treatment in order to comply with applicable
13 effluent limitations or water quality standards: *Provided,*
14 That the Director may approve a request for Phase I but not
15 Phase II or III, release if the applicant demonstrates to
16 the satisfaction of the Director that either:

17 (A) The remaining bond is adequate to assure long term
18 treatment of the drainage; or

19 (B) The operator has irrevocably committed other
20 financial resources which are adequate to assure long term
21 treatment of the drainage: *Provided, That the alternate*
22 financial resources must be in acceptable form, and meet
23 the standards set forth in Section 11 of the Act and

1 Section 11 of this rule: *Provided, however, That the*
2 *alternate financial arrangements shall provide a mechanism*
3 *whereby the Director can assume management of the resources*
4 *and treatment work in the event that the operator defaults*
5 *for any reason: And provided further, That default on a*
6 *treatment obligation under this paragraph shall be*
7 *considered equivalent to a bond forfeiture, and the*
8 *operator will be subject to penalties and sanctions,*
9 *including permit blocking, as if a bond forfeiture had*
10 *occurred.*

11 *In order to make such demonstration as referenced*
12 *above, the applicant shall address, at a minimum, the*
13 *current and projected quantity and quality of drainage to*
14 *be treated, the anticipated duration of treatment, the*
15 *estimated capital and operating cost of the treatment*
16 *facility, and the calculations which demonstrate the*
17 *adequacy of the remaining bond or of the alternate*
18 *financial resources.'*

19 *On page sixteen, section 38-2-2.106, after the words*
20 *'sum of the loading' by inserting the words 'or driving';*
21 *and by striking out the words 'in a constructed valley*
22 *fill, backfill, dam, or refuse pile' and inserting in lieu*
23 *thereof the words 'as determined by acceptable engineering*

1 practices';

2 On page twenty-eight, section 38-2-3.3(e), after the
3 words 'limited number of minor changes' by inserting the
4 words 'that do not significantly affect the health, safety
5 or welfare of the public and';

6 On page thirty-six, section 38-2-3.6(h)(5), after the
7 words 'as defined in' by striking out the words 'Article 5D
8 of Chapter 20' and inserting in lieu thereof the words
9 'Article 14 of Chapter 22';

10 On page thirty-nine, section 38-2-3.8(c), at the end
11 after the words 'reasonable time for compliance.', by
12 inserting a new sentence to read as follows: 'Provided,
13 That those structures and facilities, where it can be
14 demonstrated that reconstruction or revision would result
15 in greater environmental harm and the performance standards
16 set forth in the Act and these regulations can otherwise be
17 met, may be exempt from revision or reconstruction.';

18 On page one hundred seventy-eight, section 38-2-
19 12.2(d), after the words 'until all coal extraction
20 operations' by inserting the words 'for the permit or
21 increment thereof', and after the words 'the entire
22 disturbed area' by inserting the words 'for the permit or
23 increment thereof';

1 On page one hundred ninety-seven, section 38-2-
2 14.3(c)(2), after the words 'medium is the best' by
3 inserting the word 'reasonably';

4 And,

5 On page two hundred fifteen, section 38-2-14.14(e)(4),
6 by striking the sentence 'Runoff from areas above and
7 adjacent to the fill shall not be allowed to flow onto the
8 fill surface, and shall be diverted into stabilized
9 diversion channels, designed and constructed to safely pass
10 the peak runoff from a 100 year, 24 hour precipitation
11 event.' and inserting in lieu thereof the sentences
12 'Surface water runoff from areas above and adjacent to the
13 fill shall be diverted into properly designed and
14 constructed stabilized diversion channels which have been
15 designed using best current technology to safely pass the
16 peak runoff from a 100 year, 24 hour precipitation event.
17 The channel shall be designed and constructed to ensure
18 stability of the fill, control erosion, and minimize water
19 infiltration into the fill.'"

20 (g) The legislative ~~rules~~ rule filed in the state
21 register on the twenty-sixth day of July, one thousand nine
22 hundred ninety-five, authorized under the authority of
23 section four, article twenty-one, chapter twenty-two of

1 this code, modified by the division of environmental
2 protection to meet the objections of the legislative
3 rule-making review committee and refiled in the state
4 register on the fourteenth day of December, one thousand
5 nine hundred ninety-five, relating to the division of
6 environmental protection (coalbed methane wells, 38 CSR
7 23), ~~are~~ is authorized.

8 (h) The legislative ~~rules~~ rule filed in the state
9 register on the twenty-third day of November, one thousand
10 nine hundred ninety-four, authorized under the authority of
11 section eight, article eleven, chapter twenty of this code,
12 modified by the division of environmental protection to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the
15 twentieth day of December, one thousand nine hundred
16 ninety-five, relating to the division of environmental
17 protection (waste tire management, 47 CSR 38G), ~~are~~ is
18 authorized.

19 (i) The legislative ~~rules~~ rule filed in the state
20 register on the twenty-second day of June, one thousand
21 nine hundred ninety-five, authorized under the authority of
22 section twenty, article fifteen, chapter twenty-two of this
23 code, modified by the division of environmental protection

1 to meet the objections of the legislative rule-making
2 review committee and refiled in the state register on the
3 twenty-second day of December, one thousand nine hundred
4 ninety-five, relating to the division of environmental
5 protection (sewage sludge management, 47 CSR 38D), ~~are is~~
6 authorized with the amendments set forth below:

7 On page seven, section 3.2.2, by striking out the
8 words "Table 3 of this rule will automatically be repealed
9 and replaced with Table 3A of this rule on December 31,
10 1997, unless this provision is modified prior to that
11 date.";

12 And,

13 On page seven, section 3.2.2, after the word "rule."
14 by inserting the following: The director is authorized
15 until Dec. 31, 1999, to issue variances to this section to
16 allow land application to soils which exceed the maximum
17 soil concentrations of metals listed in Table 3 where soil
18 analyses demonstrate that other soil factors, including,
19 but not limited to, soil pH, cation exchange capacity,
20 organic matter content, or clay content, will limit
21 mobility and availability of the metals. No later than
22 June 30, 1999, the director shall propose revisions to
23 Table 3 to adequately protect soil quality, human health

1 and the environment',

2 And,

3 On page 20, by striking the following from Table 3:
4 "NOTE: Table 3 of this rule will automatically be repealed
5 and replaced with Table 3A of this rule on December 31,
6 1997, unless the provision of paragraph 3.2.2 of this rule
7 is modified prior to that date.",

8 And,

9 On page 21, by striking out all of Table 3A.

10 (j) The legislative ~~rules rule~~ filed in the state
11 register on the thirty-first day of July, one thousand nine
12 hundred ninety-five, authorized under the authority of
13 section four, article five, chapter twenty-two of this
14 code, relating to the division of environmental protection
15 (to prevent and control of air pollution from the emission
16 of volatile organic compounds, 45 CSR 21), are is
17 authorized with the following amendment:

18 "On pages 170 and 171, by striking out section 40 in
19 its entirety and inserting in lieu thereof a new section
20 40, to read as follows:

21 §45-21-40. Other Facilities that Emit Volatile Organic
22 Compound (VOC).

23 40.1. Applicability.

1 a. This section 40. applies to any facility that has
2 aggregate maximum theoretical emissions of 90.7 megagrams
3 (mg) (100 tons) or more of volatile organic compounds
4 (VOCs) per calendar year in the absence of control devices;
5 provided that this section 40. applies to any source or
6 sources within such facility other than those sources
7 subject to regulation under sections 11. through 39. VOC
8 emissions from sources regulated under sections 11. through
9 39., but which fall below the applicability thresholds of
10 these sections, and thus are not subject to the emissions
11 control standards of these sections, shall be included in
12 the determination of maximum theoretical emissions for a
13 facility but shall not be subject to the requirements of
14 this section 40. Emissions from sources listed in section
15 40.1.d. shall not be included in the determination of
16 maximum theoretical emissions for a facility.

17 b. The owner or operator of a coating line or
18 operation, whose emissions are below this applicability
19 threshold, shall comply with the certification,
20 recordkeeping, and reporting requirements of section
21 40.6.a.

22 c. The owner or operator of a non-coating source,
23 whose emissions are below this applicability threshold,

1 shall comply with the certification, recordkeeping, and
2 reporting requirements of section 40.6.b.

3 d. The requirements of this section 40. shall not
4 apply to coke ovens (including by-product recovery plants),
5 fuel combustion sources, barge loading facilities, jet
6 engine test cells, vegetable oil processing facilities,
7 wastewater treatment facilities, iron and steel production,
8 surface impoundments, pits, and boilers, industrial
9 furnaces, and incinerators having a destruction efficiency
10 of 95 percent or greater.

11 e. The requirements of this section 40. shall not
12 apply to any facility bound by an order or permit,
13 enforceable by the Director, which limits the facility's
14 emissions to less than 100 tons of VOC per calendar year
15 without the application of control devices.

16 40.2. Definitions. -- As used in this section 40., all
17 terms not defined herein shall have the meaning given them
18 in section 2.

19 a. 'Reasonably available control measures' (also
20 denoted as RACM) means an emission limit or limits that
21 reflect the application of control technology and/or
22 abatement techniques or measures that are reasonably
23 available, considering technological and economic

1 feasibility. Such emission limits may be considered on a
2 plant-wide basis to achieve emission reduction requirements
3 in the most cost effective manner.

4 b. "Fugitive emissions" means those emissions which
5 could not reasonably pass through a stack, chimney, vent,
6 or other functionally equivalent opening.

7 40.3. Standards. -- The owner or operator of a
8 facility subject to this section 40. shall:

9 a. Except as provided in section 40.3.b.,

10 1. With respect to any existing non-fugitive
11 emission source which has maximum theoretical emissions of
12 6 pounds per hour or more, comply with an emission control
13 plan established on a case-by-case basis approved by the
14 Director that meets the definition of reasonably available
15 control measures (RACM) and achieves at least a 90 percent
16 reduction in emissions below the total (aggregate) maximum
17 theoretical emissions from all such non-fugitive emission
18 sources subject to RACM requirements; and

19 2. With respect to each process unit producing a
20 product or products, intermediate or final, in excess of
21 1000 megagrams (Mg) (1,100 tons) per year, regardless of
22 whether such product or products are listed in 40 CFR
23 60.489, comply with an emission control plan for fugitive

1 sources using the methods and criteria of section 37., or
2 alternative methods and criteria approved by the Director.
3 The Director may exempt a process unit from fugitive
4 emission control requirements upon satisfactory
5 demonstration that emissions are of minor significance.

6 b. With respect to such sources as described in
7 sections 40.3.a.1. and 40.3.a.2., comply with emission
8 limits and measures based upon an alternative emissions
9 reduction plan approved by the Director considering
10 technical, economic and air quality benefit considerations
11 that, at a minimum, maintains emission control measures
12 incorporated as part of any federally approved maintenance
13 plan for the county or area in which the source is located.

14 c. With respect to any source at a facility subject to
15 this section 40., which source has maximum theoretical
16 emissions of 6 pounds per hour or more and is constructed,
17 modified or begins operating after the effective date of
18 this rule, comply with a control plan developed on a case-
19 by-case basis approved by the Director that meets the
20 definition of reasonably available control technology
21 (RACT) in section 2.60. for both fugitive and non-
22 fugitive emission sources.

23 40.4. Submissions and Approval of Control Plans

1 a. Within 90 days after the effective date of this
2 rule, the owner or operator of a facility subject to this
3 section 40. shall submit any required amendments to the
4 case-by-case RACT control plans previously submitted to the
5 Director, that revise such control plans to meet the
6 definition of reasonably available control measures (RACM).

7 b. Notwithstanding the provisions of section 9.2.,
8 the owner or operator of a facility subject to this rule
9 solely due to this section 40., that requires a major
10 process change and/or major capital investment to comply
11 with RACM requirements, may petition the Director for an
12 additional extension beyond December 31, 1996, for
13 compliance certification, and the Director may grant such
14 extension when warranted. Provided however, such
15 compliance certification date shall be no later July 31,
16 1997.

17 c. The Director shall not approve a RACM plan or an
18 alternative emissions reduction plan under this section 40.
19 unless such plan includes:

20 1. A commitment to develop and submit a
21 complete RACT plan to the Director within 180 days of a
22 finding by the Director that a violation of the National
23 Ambient Air Quality Standard for ozone has occurred within

1 the county or maintenance area in which the source is
2 located; and

3 2. A commitment to achieving full
4 implementation of RACT within 2 years of approval of the
5 RACT plan by the Director.

6 d. A finding by the Director that a violation of
7 the National Ambient Air Quality Standard for ozone has
8 occurred shall be made based upon verification of a
9 monitored ozone standard violation in the county or
10 maintenance area in which the source is located. The three
11 maintenance areas (the Huntington area, comprising Cabell
12 and Wayne counties; the Charleston area, comprising Kanawha
13 and Putnam counties; and the Parkersburg area, comprising
14 Wood county) shall be treated separately and independently
15 for any such finding(s).

16 e. All RACM control plans, RACT control plans, and
17 alternative emissions reduction plans approved by the
18 Director pursuant to this section 40. shall be embodied in
19 a consent order or permit in accordance with 45CSR13 or
20 45CSR30, as required. A facility owner or operator may at
21 any time petition the Director to approve revisions to
22 these plans. The decision concerning said petition shall
23 be issued by the Director in accordance with 45CSR13 or

1 45CSR30, as required, or a consent order. Any such
2 revisions shall be subject to the public participation
3 requirements of 45CSR13 or 45CSR30.

4 f. The owner or operator of a facility subject to
5 this section 40. may submit for approval by the Director an
6 emission control plan that meets the definition of
7 reasonably available control technology (RACT) in section
8 2.60.

9 40.5. Test methods and procedures. -- The owner or
10 operator of any source subject to this section 40. shall
11 demonstrate compliance with section 40.3. by using the
12 applicable test methods specified in sections 41. through
13 46 or by other means approved by the Director.
14 Notwithstanding the requirements of section 41.1., EPA
15 approval for alternate test methods to demonstrate
16 compliance shall not be required for sources which are
17 subject solely to emission control requirements specified
18 in section 40.3.

19 40.6. Reporting and Recordkeeping Requirements for
20 Exempt Non-Control Technique Guideline (CTG) Sources.

21 a. An owner or operator of a coating line or
22 operation that is exempt from the emission limitations in
23 section 40.3. shall comply with the certification,

1 recordkeeping, and reporting requirements in section 4.2.

2 b. An owner or operator of a non-coating source
3 that is exempt from the emission limitations in section
4 40.3. shall submit, upon request by the Director, records
5 that document that the source is exempt from these
6 requirements.

7 1. These records shall be submitted to the
8 Director within 30 days from the date of request.

9 2. If such records are not made available, the
10 source will be considered subject to the limits in section
11 40.3.

12 40.7. Reporting and Recordkeeping Requirements for
13 Subject Non-CTG Coating Sources. -- An owner or operator of
14 a coating line or operation subject to this section 40. and
15 complying with section 40.3. shall comply with the
16 certification, recordkeeping, and reporting requirements in
17 section 4.

18 40.8. Reporting and Recordkeeping Requirements for
19 Subject Non-CTG, Non-Coating Sources:

20 a. The owner or operator of the subject VOC sources
21 shall perform all testing and maintain the results of all
22 tests and calculations required under sections 40.3. and
23 40.5. to demonstrate that the subject source is in

1 compliance.

2 b. The owner or operator of the subject VOC source
3 shall maintain these records in a readily accessible
4 location for a minimum of 3 years, and shall make these
5 records available to the Director upon verbal or written
6 request.

7 c. The owner or operator of any facility containing
8 sources subject to this section 40, shall comply with the
9 requirements in section 5, except that such requirements,
10 as they apply to sources solely subject to this section
11 40., may be modified by the Director upon petition by the
12 owner or operator. Any such modified requirements shall be
13 embodied in the facility's control plan (RACM, RACT or
14 alternative plan) and reflected in the associated consent
15 order or permit issued pursuant to 45CSR13 or 45CSR30."

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

1 ninety-six, relating to the division of environmental
2 protection (monitoring well design standards, 47 CSR 60),
3 ~~are~~ is authorized.

4 (1) The legislative ~~rules~~ rule filed in the state
5 register on the thirty-first day of July, one thousand nine
6 hundred ninety-five, authorized under the authority of
7 section five, article fifteen, chapter twenty-two of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 twenty-fourth day of January, one thousand ~~nine~~ hundred
12 ninety-six, relating to the division of environmental
13 protection (solid waste management, 47 CSR 38), ~~are~~ is
14 authorized with the following amendments:

15 "On page 37, subdivision 3.8.4, after the words 'from
16 the uppermost' by striking the word 'significant.']

17 On page 142, by striking the existing subdivision
18 4.11.2.c.A and inserting in lieu thereof the following:

19 '4.11.2.c.A

20 The monitoring frequency for all constituents listed in
21 Appendix I of this rule, must be at least twice a year
22 during the active life of the facility, including closure
23 and the post-closure periods. The director may require

1 more frequent monitoring on a site-specific basis by
2 considering aquifer flow rate and existing quality of the
3 groundwater.'

4 On page 148, by striking the existing subdivision
5 4.11.3.i.A. and inserting in lieu thereof the following:
6 '4.11.3.i.A.

7 The director may consider an alternative groundwater
8 protection standard in consultation with the environmental
9 quality board pursuant to 47CSR57 for constituents for
10 which water quality standards have not been established.'

11 On page 151, subdivision 4.11.5., by following the
12 words 'any applicable groundwater quality protection
13 standards' by inserting the words 'and/or background
14 groundwater quality, pursuant to the requirements of the
15 Groundwater Protection Act, WVC §22-12-1 et seq.'

16 On page 152, subdivision 4.11.6.b.A., by following the
17 words 'Be protective of human health and the environment'
18 inserting the words 'and maintain existing groundwater
19 quality, pursuant to the requirements of the Groundwater
20 Protection Act, WVC §22-12-1 et seq.'

21 On page 154, subdivision 4.11.6.d.B.(f), by striking
22 the words 'Resource value of the aquifer' and inserting in
23 lieu thereof the words 'The hydrogeologic characteristics

1 of the facility and the surrounding land,'

2 On page 154, subdivision 4.11.6.d.B(f) (e) by striking
3 out the words "The hydrogeologic characteristics of the
4 facility and surrounding land;

5 And, by renumbering and relettering the remaining
6 subdivisions of the rule.

7 On page 156, subdivision 4.11.7.a.A., by following the
8 words 'Demonstrate compliance with' inserting the words
9 'the Groundwater Protection Act, WVC §22-12-1 et seq.,
10 and/or the''

11 And,

12 On page 173, subdivision 5.4.3, by adding the
13 following sentence to the end of the subdivision: 'A class
14 D facility other than a class D-1 solid waste facility
15 shall not exceed two (2) acres in size.'"

16 (m) The legislative rule filed in the state register
17 on the twenty-ninth day of August, one thousand nine
18 hundred ninety-six, authorized under the authority of
19 section four, article five, chapter twenty-two, of this
20 code, relating to the division of environmental protection
21 (standards of performance for new stationary sources
22 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

23

1 NOTE: The purpose of this bill is to authorize the
2 Division of Environmental Protection to promulgate a
3 legislative rule relating to Standards of Performance for
4 New Stationary Sources Pursuant to 40 CFR Part 60.
5
6 Strike-throughs indicate language that would be
7 stricken from the present law, and underscoring indicates
8 new language that would be added.

Senate Bill No. 171

(By Senator(s) Ross, Anderson, Macnaughtan,
Boley and Buckalew)

[Introduced March 3, 1997; referred to the
Committee on Natural Resources; and then to the
Committee on the Judiciary.]

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
pursuant to 40 CFR Part 60.

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.

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

2 (a) The legislative ~~rules~~ rule filed in the state
3 register on twenty-eighth day of July, one thousand nine
4 hundred ninety-five, authorized under the authority of
5 section four, article five, chapter twenty-two of this
6 code, relating to the division of environmental protection
7 (emission standards for hazardous air pollutants pursuant
8 to 40 CFR Part 63, 45 CSR 34), ~~are~~ is authorized.

9 (b) The legislative ~~rules~~ rule filed in the state
10 register on the twenty-eighth day of July, one thousand
11 nine hundred ninety-five, authorized under the authority of
12 section four, article five, chapter twenty-two of this
13 code, modified by the division of environmental protection
14 to meet the objections of the legislative rule-making
15 review committee and refiled in the state register on the
16 twenty-seventh day of October, one thousand nine hundred
17 ninety-five, relating to the division of environmental
18 protection (to prevent and control air pollution from
19 hazardous waste treatment, storage or disposal facilities,
20 45 CSR 25), ~~are~~ is authorized.

21 (c) The legislative ~~rules~~ rule filed in the state
22 register on the twenty-eighth day of July, one thousand
23 nine hundred ninety-five, authorized under the authority of

1 section four, article five, chapter twenty-two of this
2 code, relating to the division of environmental protection
3 (acid rain provisions and permits, 45 CSR 33), ~~are~~ is
4 authorized.

5 (d) The legislative ~~rules~~ rule filed in the state
6 register on the thirty-first day of July, one thousand nine
7 hundred ninety-five, authorized under the authority of
8 section six, article seventeen, chapter twenty-two of this
9 code, modified by the division of environmental protection
10 to meet the objections of the legislative rule-making
11 review committee and refiled in the state register on the
12 eighteenth day of January, one thousand nine hundred
13 ninety-six, relating to the division of environmental
14 protection (underground storage tanks, 47 CSR 36), ~~are~~ is
15 authorized.

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

1 ninety-six, relating to the division of environmental
2 protection (hazardous waste management regulations, 47 CSR
3 35), ~~are~~ is authorized.

4 (f) The legislative ~~rules~~ rule filed in the state
5 register on the thirty-first day of July, one thousand nine
6 hundred ninety-five, authorized under the authority of
7 section four, article three, chapter twenty-two of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 twenty-third day of January, one thousand nine hundred
12 ninety-six, relating to the division of environmental
13 protection (surface mining and reclamation regulations, 38
14 CSR 2), ~~are~~ is authorized with the following amendments:

15 "On page 64, section 3.27, after the word 'Director'
16 by striking out the word 'may' and inserting in lieu
17 thereof the word 'shall';

18 On page 64, section 3.27, after the word 'completed'
19 by striking out the remainder of the first paragraph and
20 inserting in lieu thereof the following words:

21 'and reclamation activities are ongoing.'

22 On page 156, section 11.6(c)(6)(A) after the word
23 'operations' by striking out the words 'within five (5)

1 years of the date of SMA approval,';

2 On page 156, section 11.6(c)(6)(B) after the word
3 '(95-87)' by striking out the words 'within five (5) years
4 of the date of SMA approval,';

5 On page 157, section 11.6(c)(6)(C) after the word
6 'State' by striking out the words 'within five (5) years of
7 the date of SMA approval,';

8 On page 163, section 11.6(d)(6)(A), after the word
9 'applicant' by striking out the words 'within five (5)
10 years of the date of SMA approval,';

11 On page 164, section 11.6(d)(6)(B), after the word
12 '95-87' by striking out the words 'within five (5) years of
13 the date of SMA approval,';

14 On page 164, section 11.6(d)(6)(C), after the word
15 'wetlands' by striking out the words 'within five (5) years
16 of the date of SMA approval,';

17 On page 169, section 11.6(e)(5)(A), after the word
18 '95-87' by striking out the words 'within five (5) years of
19 the date of SMA approval,';

20 On page 169, section 11.6(e)(5)(B), after the word
21 'wetlands' by striking out the words 'within five (5) years
22 of the date of SMA approval,';

23 On page 175, section 11.6(f)(5)(A), after the word

1 '95-87', by striking out the words 'within five (5) years
2 of the date of SMA approval,';

3 On page 175, section 11.6(f)(5)(B), after the word
4 'enhancement' by striking out the words 'of wetlands within
5 five (5) years of the date of SMA approval,'.

6 On page 178, section 12.2 subsection (e) by striking
7 12.2.e in its entirety and inserting in lieu thereof the
8 following:

9 'Notwithstanding any other provisions of this rule, no
10 bond release or reduction will be granted if, at the time,
11 water discharged from or affected by the operation requires
12 chemical treatment in order to comply with applicable
13 effluent limitations or water quality standards: *Provided,*
14 That the Director may approve a request for Phase I but not
15 Phase II or III, release if the applicant demonstrates to
16 the satisfaction of the Director that either:

17 (A) The remaining bond is adequate to assure long term
18 treatment of the drainage; or

19 (B) The operator has irrevocably committed other
20 financial resources which are adequate to assure long term
21 treatment of the drainage: *Provided,* That the alternate
22 financial resources must be in acceptable form, and meet
23 the standards set forth in Section 11 of the Act and

1 Section 11 of this rule: *Provided, however, That the*
2 *alternate financial arrangements shall provide a mechanism*
3 *whereby the Director can assume management of the resources*
4 *and treatment work in the event that the operator defaults*
5 *for any reason: And provided further, That default on a*
6 *treatment obligation under this paragraph shall be*
7 *considered equivalent to a bond forfeiture, and the*
8 *operator will be subject to penalties and sanctions,*
9 *including permit blocking, as if a bond forfeiture had*
10 *occurred.*

11 In order to make such demonstration as referenced
12 above, the applicant shall address, at a minimum, the
13 current and projected quantity and quality of drainage to
14 be treated, the anticipated duration of treatment, the
15 estimated capital and operating cost of the treatment
16 facility, and the calculations which demonstrate the
17 adequacy of the remaining bond or of the alternate
18 financial resources.'

19 On page sixteen, section 38-2-2.106, after the words
20 'sum of the loading' by inserting the words 'or driving';
21 and by striking out the words 'in a constructed valley
22 fill, backfill, dam, or refuse pile' and inserting in lieu
23 thereof the words 'as determined by acceptable engineering

1 practices';

2 On page twenty-eight, section 38-2-3.2(e), after the
3 words 'limited number of minor changes' by inserting the
4 words 'that do not significantly affect the health, safety
5 or welfare of the public and';

6 On page thirty-six, section 38-2-3.6(h)(5), after the
7 words 'as defined in' by striking out the words 'Article 5D
8 of Chapter 20' and inserting in lieu thereof the words
9 'Article 14 of Chapter 22';

10 On page thirty-nine, section 38-2-3.8(c), at the end
11 after the words 'reasonable time for compliance.', by
12 inserting a new sentence to read as follows: 'Provided,
13 That those structures and facilities, where it can be
14 demonstrated that reconstruction or revision would result
15 in greater environmental harm and the performance standards
16 set forth in the Act and these regulations can otherwise be
17 met, may be exempt from revision or reconstruction.';

18 On page one hundred seventy-eight, section 38-2-
19 12.2(d), after the words 'until all coal extraction
20 operations' by inserting the words 'for the permit or
21 increment thereof', and after the words 'the entire
22 disturbed area' by inserting the words 'for the permit or
23 increment thereof';

1 On page one hundred ninety-seven, section 38-2-
2 14.3(c)(2); after the words 'medium is the best' by
3 inserting the word 'reasonably';

4 And,

5 On page two hundred fifteen, section 38-2-14.14(e)(4),
6 by striking the sentence 'Runoff from areas above and
7 adjacent to the fill shall not be allowed to flow onto the
8 fill surface, and shall be diverted into stabilized
9 diversion channels, designed and constructed to safely pass
10 the peak runoff from a 100 year, 24 hour precipitation
11 event.' and inserting in lieu thereof the sentences
12 'Surface water runoff from areas above and adjacent to the
13 fill shall be diverted into properly designed and
14 constructed stabilized diversion channels which have been
15 designed using best current technology to safely pass the
16 peak runoff from a 100 year, 24 hour precipitation event.
17 The channel shall be designed and constructed to ensure
18 stability of the fill, control erosion, and minimize water
19 infiltration into the fill.'"

20 (g) The legislative ~~rules~~ rule filed in the state
21 register on the twenty-sixth day of July, one thousand nine
22 hundred ninety-five, authorized under the authority of
23 section four, article twenty-one, chapter twenty-two of

1 this code, modified by the division of environmental
2 protection to meet the objections of the legislative
3 rule-making review committee and refiled in the state
4 register on the fourteenth day of December, one thousand
5 nine hundred ninety-five, relating to the division of
6 environmental protection (coalbed methane wells, 38 CSR
7 23), ~~are~~ is authorized.

8 (h) The legislative ~~rules~~ rule filed in the state
9 register on the twenty-third day of November, one thousand
10 nine hundred ninety-four, authorized under the authority of
11 section eight, article eleven, chapter twenty of this code,
12 modified by the division of environmental protection to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the
15 twentieth day of December, one thousand nine hundred
16 ninety-five, relating to the division of environmental
17 protection (waste tire management, 47 CSR 38G), ~~are~~ is
18 authorized.

19 (i) The legislative ~~rules~~ rule filed in the state
20 register on the twenty-second day of June, one thousand
21 nine hundred ninety-five, authorized under the authority of
22 section twenty, article fifteen, chapter twenty-two of this
23 code, modified by the division of environmental protection

1 to meet the objections of the legislative rule-making
2 review committee and refiled in the state register on the
3 twenty-second day of December, one thousand nine hundred
4 ninety-five, relating to the division of environmental
5 protection (sewage sludge management, 47 CSR 38D), ~~are~~ is
6 authorized with the amendments set forth below:

7 On page seven, section 3.2.2, by striking out the
8 words "Table 3 of this rule will automatically be repealed
9 and replaced with Table 3A of this rule on December 31,
10 1997, unless this provision is modified prior to that
11 date.";

12 And,

13 On page seven, section 3.2.2, after the word "rule."
14 by inserting the following: The director is authorized
15 until Dec. 31, 1999, to issue variances to this section to
16 allow land application to soils which exceed the maximum
17 soil concentrations of metals listed in Table 3 where soil
18 analyses demonstrate that other soil factors, including,
19 but not limited to, soil pH, cation exchange capacity,
20 organic matter content, or clay content, will limit
21 mobility and availability of the metals. No later than
22 June 30, 1999, the director shall propose revisions to
23 Table 3 to adequately protect soil quality, human health

1 and the environment',

2 And,

3 On page 20, by striking the following from Table 3:
4 "NOTE: Table 3 of this rule will automatically be repealed
5 and replaced with Table 3A of this rule on December 31,
6 1997, unless the provision of paragraph 3.2.2 of this rule
7 is modified prior to that date.",

8 And,

9 On page 21, by striking out all of Table 3A.

10 (j) The legislative ~~rules~~ rule filed in the state
11 register on the thirty-first day of July, one thousand nine
12 hundred ninety-five, authorized under the authority of
13 section four, article five, chapter twenty-two of this
14 code, relating to the division of environmental protection
15 (to prevent and control of air pollution from the emission
16 of volatile organic compounds, 45 CSR 21), ~~are~~ is
17 authorized with the following amendment:

18 "On pages 170 and 171, by striking out section 40 in
19 its entirety and inserting in lieu thereof a new section
20 40, to read as follows:

21 §45-21-40. Other Facilities that Emit Volatile Organic
22 Compound (VOC).

23 40.1. Applicability.

1 a. This section 40. applies to any facility that has
2 aggregate maximum theoretical emissions of 90.7 megagrams
3 (mg) (100 tons) or more of volatile organic compounds
4 (VOCs) per calendar year in the absence of control devices;
5 provided that this section 40. applies to any source or
6 sources within such facility other than those sources
7 subject to regulation under sections 11. through 39. VOC
8 emissions from sources regulated under sections 11. through
9 39., but which fall below the applicability thresholds of
10 these sections, and thus are not subject to the emissions
11 control standards of these sections, shall be included in
12 the determination of maximum theoretical emissions for a
13 facility but shall not be subject to the requirements of
14 this section 40. Emissions from sources listed in section
15 40.1.d. shall not be included in the determination of
16 maximum theoretical emissions for a facility.

17 b. The owner or operator of a coating line or
18 operation, whose emissions are below this applicability
19 threshold, shall comply with the certification,
20 recordkeeping, and reporting requirements of section
21 40.6.a.

22 c. The owner or operator of a non-coating source,
23 whose emissions are below this applicability threshold,

1 shall comply with the certification, recordkeeping, and
2 reporting requirements of section 40.6.b.

3 d. The requirements of this section 40. shall not
4 apply to coke ovens (including by-product recovery plants),
5 fuel combustion sources, barge loading facilities, jet
6 engine test cells, vegetable oil processing facilities,
7 wastewater treatment facilities, iron and steel production,
8 surface impoundments, pits, and boilers, industrial
9 furnaces, and incinerators having a destruction efficiency
10 of 95 percent or greater.

11 e. The requirements of this section 40. shall not
12 apply to any facility bound by an order or permit,
13 enforceable by the Director, which limits the facility's
14 emissions to less than 100 tons of VOC per calendar year
15 without the application of control devices.

16 40.2. Definitions. -- As used in this section 40., all
17 terms not defined herein shall have the meaning given them
18 in section 2.

19 --a. 'Reasonably available control measures' (also
20 denoted as RACM) means an emission limit or limits that
21 reflect the application of control technology and/or
22 abatement techniques or measures that are reasonably
23 available, considering technological and economic

1 feasibility. Such emission limits may be considered on a
2 plant-wide basis to achieve emission reduction requirements
3 in the most cost effective manner.

4 b. "Fugitive emissions" means those emissions which
5 could not reasonably pass through a stack, chimney, vent,
6 or other functionally equivalent opening.

7 40.3. Standards. -- The owner or operator of a
8 facility subject to this section 40. shall:

9 a. Except as provided in section 40.3.b.,

10 1. With respect to any existing non-fugitive
11 emission source which has maximum theoretical emissions of
12 6 pounds per hour or more, comply with an emission control
13 plan established on a case-by-case basis approved by the
14 Director that meets the definition of reasonably available
15 control measures (RACM) and achieves at least a 90 percent
16 reduction in emissions below the total (aggregate) maximum
17 theoretical emissions from all such non-fugitive emission
18 sources subject to RACM requirements; and

19 2. With respect to each process unit producing a
20 product or products, intermediate or final, in excess of
21 1000 megagrams (Mg) (1,100 tons) per year, regardless of
22 whether such product or products are listed in 40 CFR
23 60.489, comply with an emission control plan for fugitive

1 sources using the methods and criteria of section 37., or
2 alternative methods and criteria approved by the Director.
3 The Director may exempt a process unit from fugitive
4 emission control requirements upon satisfactory
5 demonstration that emissions are of minor significance.

6 b. With respect to such sources as described in
7 sections 40.3.a.1. and 40.3.a.2., comply with emission
8 limits and measures based upon an alternative emissions
9 reduction plan approved by the Director considering
10 technical, economic and air quality benefit considerations
11 that, at a minimum, maintains emission control measures
12 incorporated as part of any federally approved maintenance
13 plan for the county or area in which the source is located.

14 c. With respect to any source at a facility subject to
15 this section 40., which source has maximum theoretical
16 emissions of 6 pounds per hour or more and is constructed,
17 modified or begins operating after the effective date of
18 this rule, comply with a control plan developed on a case-
19 by-case basis approved by the Director that meets the
20 definition of reasonably available control technology
21 (RACT) in section 2.60. for both fugitive and non-
22 fugitive emission sources.

23 40.4. Submissions and Approval of Control Plans

1 a. Within 90 days after the effective date of this
2 rule, the owner or operator of a facility subject to this
3 section 40. shall submit any required amendments to the
4 case-by-case RACT control plans previously submitted to the
5 Director, that revise such control plans to meet the
6 definition of reasonably available control measures (RACM).

7 b. Notwithstanding the provisions of section 9.2.,
8 the owner or operator of a facility subject to this rule
9 solely due to this section 40., that requires a major
10 process change and/or major capital investment to comply
11 with RACM requirements, may petition the Director for an
12 additional extension beyond December 31, 1996, for
13 compliance certification, and the Director may grant such
14 extension when warranted. Provided however, such
15 compliance certification date shall be no later July 31,
16 1997.

17 c.. The Director shall not approve a RACM plan or an
18 alternative emissions reduction plan under this section 40.
19 unless such plan includes:

20 1. A commitment to develop and submit a
21 complete RACT plan to the Director within 180 days of a
22 finding by the Director that a violation of the National
23 Ambient Air Quality Standard for ozone has occurred within

1 the county or maintenance area in which the source is
2 located; and

3 2. A commitment to achieving full
4 implementation of RACT within 2 years of approval of the
5 RACT plan by the Director.

6 d. A finding by the Director that a violation of
7 the National Ambient Air Quality Standard for ozone has
8 occurred shall be made based upon verification of a
9 monitored ozone standard violation in the county or
10 maintenance area in which the source is located. The three
11 maintenance areas (the Huntington area, comprising Cabell
12 and Wayne counties; the Charleston area, comprising Kanawha
13 and Putnam counties; and the Parkersburg area, comprising
14 Wood county) shall be treated separately and independently
15 for any such finding(s).

16 e. All RACM control plans, RACT control plans, and
17 alternative emissions reduction plans approved by the
18 Director pursuant to this section 40. shall be embodied in
19 a consent order or permit in accordance with 45CSR13 or
20 45CSR30, as required. A facility owner or operator may at
21 any time petition the Director to approve revisions to
22 these plans. The decision concerning said petition shall
23 be issued by the Director in accordance with 45CSR13 or

1 45CSR30, as required, or a consent order. Any such
2 revisions shall be subject to the public participation
3 requirements of 45CSR13 or 45CSR30.

4 f. The owner or operator of a facility subject to
5 this section 40. may submit for approval by the Director an
6 emission control plan that meets the definition of
7 reasonably available control technology (RACT) in section
8 2.60.

9 40.5. Test methods and procedures. -- The owner or
10 operator of any source subject to this section 40. shall
11 demonstrate compliance with section 40.3. by using the
12 applicable test methods specified in sections 41. through
13 46 or by other means approved by the Director.
14 Notwithstanding the requirements of section 41.1., EPA
15 approval for alternate test methods to demonstrate
16 compliance shall not be required for sources which are
17 subject solely to emission control requirements specified
18 in section 40.3.

19 40.6. Reporting and Recordkeeping Requirements for
20 Exempt Non-Control Technique Guideline (CTG) Sources.

21 a. An owner or operator of a coating line or
22 operation that is exempt from the emission limitations in
23 section 40.3. shall comply with the certification,

1 recordkeeping, and reporting requirements in section 4.2.

2 b. An owner or operator of a non-coating source
3 that is exempt from the emission limitations in section
4 40.3. shall submit, upon request by the Director, records
5 that document that the source is exempt from these
6 requirements.

7 1. These records shall be submitted to the
8 Director within 30 days from the date of request.

9 2. If such records are not made available, the
10 source will be considered subject to the limits in section
11 40.3.

12 40.7. Reporting and Recordkeeping Requirements for
13 Subject Non-CTG Coating Sources. -- An owner or operator of
14 a coating line or operation subject to this section 40. and
15 complying with section 40.3. shall comply with the
16 certification, recordkeeping, and reporting requirements in
17 section 4.

18 40.8. Reporting and Recordkeeping Requirements for
19 Subject Non-CTG, Non-Coating Sources.

20 a. The owner or operator of the subject VOC sources
21 shall perform all testing and maintain the results of all
22 tests and calculations required under sections 40.3. and
23 40.5. to demonstrate that the subject source is in

1 compliance.

2 b. The owner or operator of the subject VOC source
3 shall maintain these records in a readily accessible
4 location for a minimum of 3 years, and shall make these
5 records available to the Director upon verbal or written
6 request.

7 c. The owner or operator of any facility containing
8 sources subject to this section 40. shall comply with the
9 requirements in section 5. except that such requirements,
10 as they apply to sources solely subject to this section
11 40., may be modified by the Director upon petition by the
12 owner or operator. Any such modified requirements shall be
13 embodied in the facility's control plan (RACM, RACT or
14 alternative plan) and reflected in the associated consent
15 order or permit issued pursuant to 45CSR13 or 45CSR30.'" "

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

1 ninety-six, relating to the division of environmental
2 protection (monitoring well design standards, 47 CSR 60),
3 ~~are~~ is authorized.

4 (1) The legislative ~~rules~~ rule filed in the state
5 register on the thirty-first day of July, one thousand nine
6 hundred ninety-five, authorized under the authority of
7 section five, article fifteen, chapter twenty-two of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 twenty-fourth day of January, one thousand nine hundred
12 ninety-six, relating to the division of environmental
13 protection (solid waste management, 47 CSR 38), ~~are~~ is
14 authorized with the following amendments:

15 "On page 37, subdivision 3.8.4, after the words 'from
16 the uppermost' by striking the word 'significant.'

17 On page 142, by striking the existing subdivision
18 4.11.2.c.A and inserting in lieu thereof the following:

19 '4.11.2.c.A

20 The monitoring frequency for all constituents listed in
21 Appendix I of this rule, must be at least twice a year
22 during the active life of the facility, including closure
23 and the post-closure periods. The director may require

1 more frequent monitoring on a site-specific basis by
2 considering aquifer flow rate and existing quality of the
3 groundwater.'

4 On page 148, by striking the existing subdivision
5 4.11.3.i.A. and inserting in lieu thereof the following:

6 '4.11.3.i.A.

7 The director may consider an alternative groundwater
8 protection standard in consultation with the environmental
9 quality board pursuant to 47CSR57 for constituents for
10 which water quality standards have not been established.'

11 On page 151, subdivision 4.11.5., by following the
12 words 'any applicable groundwater quality protection
13 standards' by inserting the words 'and/or background
14 groundwater quality, pursuant to the requirements of the
15 Groundwater Protection Act, WVC §22-12-1 et seq.'

16 On page 152, subdivision 4.11.6.b.A., by following the
17 words 'Be protective of human health and the environment'
18 inserting the words 'and maintain existing groundwater
19 quality, pursuant to the requirements of the Groundwater
20 Protection Act, WVC §22-12-1 et seq.'

21 On page 154, subdivision 4.11.6.d.B.(f), by striking
22 the words 'Resource value of the aquifer' and inserting in
23 lieu thereof the words 'The hydrogeologic characteristics

1 of the facility and the surrounding land,"

2 On page 154, subdivision 4.11.6.d.B(f).(e) by striking
3 out the words "The hydrogeologic characteristics of the
4 facility and surrounding land;

5 And, by renumbering and relettering the remaining
6 subdivisions of the rule.

7 On page 156, subdivision 4.11.7.a.A), by following the
8 words 'Demonstrate compliance with' inserting the words
9 'the Groundwater Protection Act, WVC §22-12-1 et seq.,
10 and/or the'

11 And,

12 On page 173, subdivision 5.4.3, by adding the
13 following sentence to the end of the subdivision: 'A class
14 D facility other than a class D-1 solid waste facility
15 shall not exceed two (2) acres in size.'

16 (m) The legislative rule filed in the state register
17 on the twenty-ninth day of August, one thousand nine
18 hundred ninety-six, authorized under the authority of
19 section four, article five, chapter twenty-two, of this
20 code, relating to the division of environmental protection
21 (standards of performance for new stationary sources
22 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

23

1 NOTE: The purpose of this bill is to authorize the
2 Division of Environmental Protection to promulgate a
3 legislative rule relating to Standards of Performance for
4 New Stationary Sources Pursuant to 40 CFR Part 60.

5
6 Strike-throughs indicate language that would be
7 stricken from the present law, and underscoring indicates
8 new language that would be added.

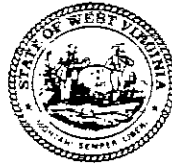
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE Plus all the volunteer
help we can get)

TO: CARRIE CHAMBERS

AGENCY: DEP - OFFICE OF AIR QUALITY

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 16, 1997

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: 16 TITLE: 45 DEP - OFFICE OF AIR QUALITY

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Rube Buford

TITLE OF PERSON SIGNING: ERS III

DATE: 6/30/97

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

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

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