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West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

September 24, 1999

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

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

Dear Ms. Cooper:

This letter will serve as my approval to file the
above-referenced rule as a "Notice of Rule Modification of
a Proposed Rule" with your office and the Legislative
Rule-Making Review Committee.

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

Sincerely yours,

A handwritten signature in black ink, reading "Michael C. Castle", is written over the typed name.

Michael C. Castle
Director

Attachment

cc: Karen Watson
Carrie Chambers

FILED

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

SEP 24 2 05 PM '99

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

SERIES 17
TO PREVENT AND CONTROL PARTICULATE MATTER
AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE
AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER

§45-17-1. General.

1.1. Scope. -- The purpose of ~~Series 17~~ this rule is to prevent and control particulate matter air pollution from materials handling, preparation, storage; and other sources of fugitive particulate matter. ~~and shall apply to the County of Kanawha; and the Magisterial Districts of Valley (Fayette County), Scott and Pocatalico (Putnam County), Tygart (Wood County), the City of Fairmont and those portions of Union and Winfield Magisterial Districts west of Interstate I-79 (Marion County).~~

~~To insure the attainment and maintenance of West Virginia's ambient air quality standards, it is the intent of the Director to evaluate sources of fugitive particulate matter and to prevent such sources from jeopardizing the attainment or maintenance of these standards by requiring the application of the best control methods or technology practicable.~~

1.2. The Director particularly urges the cooperation of municipalities in utilizing street sweepers equipped with dust capturing equipment, on a regular basis, to minimize particulate matter reentrainment into the air from heavily trafficked streets. In addition, municipalities should take such action as necessary to control fugitive particulate matter emissions arising from unpaved streets, access roads, private parking lots; and any other such sources of uncontrolled particulate matter.

~~It is the intent of the Director that fugitive particulate matter sources be controlled in a timely and progressive manner, so that all such sources are in compliance with this rule as soon as~~

~~possible, but not later than December 31, 1982.~~

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

1.3.4. Filing Date. -- ~~March 30, 1979.~~

1.4.5. Effective Date. -- ~~May 1, 1979.~~

1.6. Former Rules. -- This legislative rule amends 45CSR17 "To Prevent and Control Particulate Air Pollution from Materials Handling, Preparation, Storage and Sources of Fugitive Particulate Matter" which was filed on March 30, 1979, and which became effective May 1, 1979.

§45-17-2. Area Affected:

~~—The County of Kanawha; and the Magisterial Districts of Valley (Fayette County), Scott and Pocatalico (Putnam County), Tygart (Wood County), the City of Fairmont and those portions of Union and Winfield Magisterial Districts west of Interstate I-79 (Marion County).~~

§45-17-32. Definitions.

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

3.2. ~~—[RESERVED]~~

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

~~3-102.3.~~ "Fugitive Particulate Matter", for the purpose of this rule, means particulate matter which becomes airborne from activities ~~associated with the transporting of materials, disposal areas, haul roads, plant grounds, public, private, and industrial parking areas or lots, public and private streets and highways, mobile drills, construction and demolition and similar activities, including, but not limited to: handling, transporting or storage of materials; storage structure(s); the use, repair, construction, alteration, renovation or demolition of building(s), road(s) or other activities; disposal areas; haul roads; plant grounds; public, private and industrial parking areas or lots; public and private streets and highways; mobile drills; and any other activity which generates airborne particulate matter.~~

~~3-112.4.~~ "Materials" includes, but is not limited to, limestone, dolomite, iron ore, slag, coke, coal, sandstone, magnetite, sinter, sand, coal refuse, soda ash, ash, cement or earth.

~~3-62.5.~~ "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

~~3-52.6.~~ "Particulate Matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid.

~~3-42.7.~~ "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership; or association of whatever nature.

~~2.8.~~ "Statutory Air Pollution" means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

~~3-7.~~ "Air Pollutants" means solids, liquids, or

gases which, if discharged into the air, may result in a statutory air pollution.

~~3-8.~~ "Air Pollution Control Equipment" means any equipment used for collecting, converting or suppressing particulate matter for the purpose of preventing or reducing discharge of such particulate matter into the open air.

~~3-9.~~ "Materials Handling and Preparation Activity" shall include, but not be limited to, the crushing, grinding, breaking, conveying, loading, unloading, transferring and classifying of materials.

~~3-12.~~ "Disposal Area" means any area where waste material is deposited for disposal. Such waste material shall include, but not be limited to, coal refuse, ash, material collected by air pollution control equipment, process overload discharges, building demolition wastes, contaminated products and materials.

~~2.9.~~ Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W. Va. Code §22-5-1 et seq.

~~§45-17-4. Control and Prohibition of Particulate Emissions From Materials Handling, Preparation and Storage:~~

~~4.1.~~ No person shall cause, suffer, allow, or permit the discharge of particulate matter from any materials handling and/or preparation activity in excess of ten percent (10%) opacity averaged over a six (6) minute period.

~~4.2.~~ No person shall cause, suffer, allow or permit the sustained discharge of particulate matter into the open air in such a manner as to be visible from any inactive storage pile.

~~Control measures that should be utilized in the storage of materials include, but are not limited to, the use of wetting and surface bonding agents, partial or total enclosures or draping of material on storage piles, or storage of materials in silos or bins with air pollution control equipment installed to prevent particulate emissions that are displaced~~

by air during loading and/or unloading operations.

~~4.3. Where any air pollution control equipment or fugitive particulate matter suppression system utilizes water in its operation, such equipment shall be designed for all-weather use.~~

~~§45-17-5. Control of Particulate Emissions From Disposal Areas.~~

~~No person shall cause, suffer, allow or permit the sustained air entrainment of particulate matter from a disposal area, except at such portions of the disposal area where depositing and/or loading out activity takes place. Good practice must be utilized to disturb only the smallest part of a disposal area possible for such activities. Section 4.1. of this rule shall apply to materials deposition and/or loading out activities.~~

~~§45-17-6. Control of Fugitive Particulate Matter Emissions From Roads, Haul Ways and Parking Lots.~~

~~As determined by the Director, a person may be required to minimize particulate matter air entrainment from vehicle activity or natural wind effects on haul ways, haul roads, parking lots and other surfaces.~~

~~§45-17-7. Control and Prohibition of Fugitive Particulate Matter Emissions From Vehicles.~~

~~No person shall cause, suffer, allow or permit a vehicle to be driven or moved on any public or private street, road, alley, highway or other thoroughfare unless such vehicle is so constructed or its cargo treated in such a manner as to prevent its contents from dripping, sifting, leaking or otherwise escaping therefrom, so as not to create conditions which result in particulate matter becoming airborne.~~

~~§45-17-8. Control and Prohibition of Fugitive Dust Emissions From Construction or Demolition Activities.~~

~~No person shall cause, suffer, allow or permit~~

~~the sustained escape of particulate matter into the open air from any construction, demolition site or abrasive cleaning operation that, in the judgement of the Director, will have an adverse effect on the ambient air quality. Such control measures as necessary shall be applied to prevent fugitive particulate matter emissions from such sources. Control measures may include adequate containment methods for abrasive cleaning operations, liquid treatment of haul roads and other surfaces, covering of material transport vehicles, the prompt removal of tracked material from roads or streets or other control measures specified by the Director.~~

§45-17-3. Control and Prohibition of Fugitive Particulate Emissions.

3.1. No person shall cause, suffer, allow or permit fugitive particulate matter to be discharged beyond the boundary lines of the property on which the discharge originates or at any public or residential location, which causes or contributes to statutory air pollution.

3.2. When a person is found in violation of this rule, the Director may require the person to utilize a system to minimize fugitive particulate matter. This system to minimize fugitive particulate matter may include, but is not limited to, the following:

3.2.a. Use, where practicable, of water or chemicals for control of particulate matter in demolition of existing buildings or structures, construction operations, grading of roads or the clearing of land;

3.2.b. Application of asphalt, water or suitable chemicals on unpaved roads, material stockpiles and other surfaces which can create airborne particulate matter;

3.2.c. Covering of material transport vehicles, or treatment of cargo, to prevent contents from dripping, sifting, leaking or otherwise escaping and becoming airborne, and prompt removal of tracked material from roads or streets; or

3.2.d. Installation and use of hoods, fans and fabric filters to enclose and vent the handling of materials, including adequate containment methods during sandblasting, abrasive cleaning or other similar operations.

§45-17-94. Control Programs and Schedules.

9-1-4.1. Any person operating a facility a source of fugitive particulate matter in violation of the provisions of this rule shall present submit a control program upon the request of the Director. The control program shall be embodied in a consent order as provided in W. Va. Code §22-5-4.

9.2. To the extent allowed by law and as requested by the Director, each municipality and county commission shall present such plans and programs as necessary to provide for the scheduled control and reduction of fugitive particulate matter by the activities regulated by this rule that are under their jurisdiction.

Such programs shall be submitted in such reasonable time as ordered by the Director and shall be progressive in nature so as to implement the earliest possible control of fugitive particulate matter into a schedule which meets the requirements of this rule.

Such schedules of compliance by that municipality or county commission shall be entered into a binding consent order between the municipality or county commission and the Director.

§45-17-10. Registration and Reporting:

At such reasonable times as the Director may designate, persons owning or operating facilities involving materials handling, preparation and storage, disposal areas or other sources of fugitive particulate matter as covered by this rule, may be required to register such sources with the Director and/or furnish periodic reports concerning such activities or sources.

§45-17-115. Variance

5.1. Because of temporary conditions beyond the control of any person, aA variance may be granted for up to ten (10) days upon presentation of sufficient evidence to the Director from the requirements of this rule by the Director for conditions beyond the control of any person. Any request for a variance shall contain evidence satisfactory to the Director. Variances of over ten (10) days may be granted by the Director, provided a an acceptable corrective control program has been submitted by the person requesting said variance.

§45-17-6. Exemptions.

6.1. Sources that are subject to the fugitive particulate matter emission requirements of 45CSR2, 45CSR3, 45CSR5 and 45CSR7 shall be exempt from the provisions of this rule, provided that such sources shall not be exempt from the provisions of W.Va. Code §§22-5-1 et seq., including the provisions of §22-5-3 relating to statutory air pollution.

6.2. Normal agricultural activities shall be exempt from the provisions of this rule, to the extent that such activities do not cause, suffer, permit or allow statutory air pollution as defined in this rule.

§45-17-7. Enforcement.

7.1. Notwithstanding any other provisions in this rule, the Director may take any and all enforcement actions authorized under the Code for a violation of this rule, including, but not limited to, requiring the immediate cessation or abatement of the discharge causing or contributing to statutory air pollution.

§45-17-8. Inconsistency Between Rules.

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

8.2. Fugitive particulate matter emission requirements of any other applicable rule issued by the Director may be taken into consideration by the Director in determining compliance with this rule.

~~§45-17-12. Conflict With Other Rules.~~

~~When a provision of this rule conflicts with similar portion(s) of any other rule previously adopted by the Director, the most stringent provision or requirement will apply.~~