

Form #6

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

45CSR32

TITLE 45
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
AS PROMULGATED BY THE
WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

SERIES 32
SERIOUS AND MINOR VIOLATIONS OF
APPLICABLE RULES

§45-32-1. General.

1.1. Scope. -- The West Virginia Air Pollution Control Commission hereby promulgates this legislative rule defining "serious violation" and "minor violation" for the violation of any provision of the Act, or for violation of any rules issued pursuant to the Act, or for the violation of any order, agreement, or permit, or any part thereof, issued under the Act.

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

1.3. Filing Date. --

1.4. Effective Date. --

RECEIVED
1992 SEP 18 AM 9 32
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§45-32-2. Definitions.

2.1. "Act" or "the Act" means the provisions of article twenty, chapter sixteen of the West Virginia Code, as amended. [§16-20-1, et seq.]

2.2. "Applicable Requirements" means all state, interstate compact, and federal standards and limitations for a source regulated pursuant to a legislative rule, including, but not limited to, emissions limitations, ambient air quality standards, standards of performance, control technology guidelines, and preconstruction review and any standard, term, condition, limitation or requirement contained in any order issued by the chief or the commission including consent orders and permits.

45CSR32

2.3. "Chief of Air Quality" or "Chief" means the chief of the Office of Air Quality or his or her designated representative appointed by the director of the Division of Environmental Protection pursuant to the provisions of W. Va. Code §22-1-1, et seq.

2.4. "Commission" means the West Virginia Air Pollution Control Commission.

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

2.6. "Division of Environmental Protection" or "DEP" means that division of the Department of Commerce, Labor, and Environmental Resources as created by the provisions of W. Va. Code §22-1-1, et seq.

2.7. "Minor Violation" means any violation of a specific provision of the Act, or rule or regulation promulgated under the Act that is not a serious violation as defined in 2.10 and section three of this rule.

2.8. "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.

2.9. "Risk of Harm" means the level of risk created by the likelihood of exposure, either individual or cumulative, or the actual damage, either individual or cumulative, to public health and the environment caused by a violation.

2.10. "Serious Violation" means those violations outlined as serious and contained in section three of this rule.

§45-32-3. Serious Violation.

3.1. Serious violation means:

- a. Any failure or refusal to comply with any final order of the chief issued as provided in the Act;
- b. Any violation specifically designated as a serious violation in any rule of the commission;
- c. Any violation of any National Emission Standard for Hazardous Air Pollutants (NESHAP) emission, monitoring, or substantial procedural requirements for existing NESHAP standards, Best Available Technology (BAT) provisions under 45CSR27 and promulgated Maximum Achievable Control Technology (MACT) requirements;
- d. Any State Implementation Plan (SIP), New Source Performance Standard (NSPS), or NESHAP procedural or monitoring requirements violated repeatedly or chronically including but not limited to failure to test, failure to report, or failure to obtain continuous monitoring data for five percent (5%) or more of the time in a calendar quarter;
- e. Any substantive violation of a judicial order;
- f. Construction and/or operation of a facility without obtaining any necessary construction and/or operating permit(s) required by rules promulgated under the Act;
- g. Avoidance of Prevention of Significant Deterioration (PSD) review while violating an emission limit or permit condition which effects PSD status;
- h. Exceedance of a permitted emission standard above the amount that would classify the source as a nonattainment area major source;
- i. Any reckless, grossly negligent or willful violation of the Act;

45CSR32

j. Any violation that causes significant harm to humans, animals or plant life;

k. Any violation of an emissions limitation when the amount of such excess emission is significant as defined under any rule promulgated by the commission;

l. Any violation that the chief determines is serious after evaluating the violator's culpability and the gravity of such violation as follows:

A. Gravity. The chief shall consider and evaluate, where pertinent, and including, but not limited to, the following factors in determining the gravity of a violation:

(a) Involvement of significant actual or potential harm to the environment or the public health;

(b) Involvement of toxic or hazardous substances or potential long term effect of the violation;

(c) The degree to which any emission limitation or ambient standard is exceeded;

(d) The duration of the violation;

(e) Program priorities, size of facility, or other pertinent factors;

(f) Causes a violation of a national ambient air quality standard or a program, plan or an applicable requirement; and

(g) The degree of willfulness of the violation, defiance, or indifference to the applicable requirement.

45CSR32

B. Culpability. The chief shall consider and evaluate, where pertinent, and include the following factors in determining the culpability of a violator:

- (a) The degree of intent or negligence;
- (b) Whether the case involves false reporting of required information or tampering with monitoring devices; and
- (c) Whether the violator has taken remedial measures or mitigated the harm caused by the violation.

C. Either the gravity of the violation or the culpability of the violator is sufficient to allow the chief to determine that a violation is serious. Any one factor under either the gravity or culpability factors may be sufficient to allow the chief to determine that the violation is serious.

3.2. Emissions in excess of those allowed under any rule, permit, or order caused by an act of God or another cause over which an alleged violator has no reasonable control shall not be considered a violation unless the alleged violator knows or should have known of the condition and does not immediately report the condition and act promptly to mitigate or cure the condition.

\$45-32-4. Separate Violations.

4.1. Each violation of any provision of the applicable requirements thereunder shall constitute a separate and distinct violation.

4.2. Each day during which the violation or failure continues shall be a separate violation.

4.3. For the first minor violation of a specific provision of the Act or rule promulgated thereunder, if the person corrects the violation within such time as was specified in the notice of violation issued by the chief, no civil penalty may be recovered.

§45-31-5. Severability.

The provisions of this legislative rule are severable and if any provision or part thereof shall be held invalid, unconstitutional, or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair any other remaining provisions, sections, or parts of this legislative rule or their application to any persons and circumstances.

SENATE BILL NO. 169

(By Senator Manchin)

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

7

8

9

10 A BILL to amend and reenact section one, article three, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 air pollution control commission to promulgate legislative
14 rules relating to serious and minor violations of applicable
15 rules.

16 Be it enacted by the Legislature of West Virginia:

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

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

22 §64-3-1. Air pollution control commission.

23 (a) The legislative rules filed in the state register on the
24 thirteenth day of August, one thousand nine hundred eighty-two,

1 relating to the air pollution control commission (series VII),
2 are authorized.

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

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

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

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

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

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

7 Such rules shall also include a section which shall read as
8 follows:

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

18 (f) The legislative rules filed in the state register on the
19 ninth day of January, one thousand nine hundred eighty-four,
20 relating to the air pollution control commission (permits for
21 construction and modification of stationary sources of air
22 pollution for the prevention of significant deterioration)
23 (series XIV), are authorized.

24 (g) The legislative rules filed in the state register on the
25 thirtieth day of December, one thousand nine hundred

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

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

16 (i) The legislative rules filed in the state register on the
17 thirtieth day of December, one thousand nine hundred
18 eighty-eight, modified by the air pollution control commission to
19 meet the objections of the legislative rule-making review
20 committee and refiled in the state register on the twenty-third
21 day of February, one thousand nine hundred eighty-nine, relating
22 to the air pollution control commission (TP-2, compliance test
23 procedures for regulation 2 -- to prevent and control particulate
24 air pollution from combustion of fuel in indirect heat
25 exchangers), are authorized.

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

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

17 (l) The legislative rules filed in the state register on the
18 sixth day of September, one thousand nine hundred eighty-nine,
19 modified by the air pollution control commission to meet the
20 objections of the legislative rule-making review committee and
21 refiled in the state register on the tenth day of January, one
22 thousand nine hundred ninety, relating to the air pollution
23 control commission (permits for construction and major
24 modification of major stationary sources of air pollution for the
25 prevention of significant deterioration), are authorized.

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

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

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

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

22 (q) The legislative rules filed in the state register on the
23 thirteenth day of August, one thousand nine hundred ninety,
24 modified by the air pollution control commission to meet the
25 objections of the legislative rule-making review committee and

1 refiled in the state register on the fifteenth day of November,
2 one thousand nine hundred ninety, relating to the air pollution
3 control commission (air quality management fee program), are
4 authorized.

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

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

16 (t) The legislative rules filed in the state register on the
17 eighteenth day of September, one thousand nine hundred ninety-
18 two, relating to the air pollution control commission (serious
19 and minor violations of applicable rules), are authorized.

20

21 NOTE: The purpose of this bill is to authorize the Air
22 Pollution Control Commission to promulgate legislative rules
23 relating to serious and minor violations of applicable rules.

24

25 Strike-throughs indicate language that would be stricken from
26 the present law, and underscoring indicates new language that
27 would be added.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

May 28, 1993

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

HB 100 authorizing, **Title 45, Series 32, Serious & Minor Violations of Applicable Rules**, passed the Legislature on **May 26, 1993**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 100, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office. Authorization for your legislative rule is cited in **HB 100** section **64-3-1(v)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

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

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

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

Thank You
Administrative Law Division