

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FORM #6

Do Not Mark In This Box

FILED

MAY 20 12 40 PM '99

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

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

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

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 33

TITLE OF RULE BEING AMENDED: "Acid Rain Provisions and Permits"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

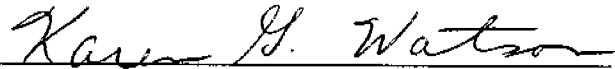
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB2533

SECTION 64-3-1(e) , PASSED ON March 21, 1999

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: June 1, 1999



Authorized Signature

\$2.40



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone: (304) 759-0515
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West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

May 19, 1999

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

RE: 45CSR33 - "Acid Rain Provisions and Permits

Dear Ms. Cooper:

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

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

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp
Karen Watson
Carrie Chambers

LEGISLATIVE HISTORY ABSTRACT

45CSR33

ACID RAIN PROVISIONS AND PERMITS

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

06/17/98	Filed Notice of Public Hearing with Secretary of State.
06/17/98	Initial Filing with Legislative Rule-Making Review Committee.
07/21/98	Held Public Hearing.
07/21/98	End of Public Comment Period.
07/31/98	Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
12/15/98	Rule Approved by Legislative Rule-Making Review Committee.
03/21/99	Passed the West Virginia Legislature.
04/02/99	Approved by the Governor.
05/20/99	Rule Final Filed with Secretary of State.
06/01/99	Effective Date of Rule.

FILED

45CSR33

May 20 12 40 PM '99

TITLE 45
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION OFFICE OF THE COMMONWEALTH OF VIRGINIA
OFFICE OF AIR QUALITY SECRETARY OF STATE

SERIES 33
ACID RAIN PROVISIONS AND PERMITS

§45-33-1. General.

1.1 Scope. -- This rule establishes general provisions and the operating permit program requirements for affected sources and affected units under the Acid Rain Program promulgated by the United States Environmental Protection Agency under Title IV of the 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 these standards.

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

1.3. Filing Date. -- May 20, 1999.

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

1.5. Incorporation by Reference - Federal Counterpart Regulation. - The Director has determined that a federal counterpart regulation exists, and in accordance with the Director's recommendation this rule incorporates by reference the following provisions: 40 CFR Part 72, "Permits Regulation"; 40 CFR Part 74, "Sulfur Dioxide Opt-Ins"; 40 CFR Part 75, "Continuous Emissions Monitoring"; 40 CFR Part 76, "Nitrogen Oxides Reduction Program"; and 40 CFR Part 77, "Excess Emissions"; effective July 1, 1997, as amended by the Federal Register through June 1, 1998.

§45-33-2. Requirements.

2.1. No person may construct, modify, or operate or cause to be constructed, modified, or operated an Acid Rain source which results or will result in a violation of this rule.

§45-33-3. Definitions.

3.1 "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.

3.2 "Director" shall mean the Director of the West Virginia Division of Environmental Protection or his or her designated representative.

3.3 "Permitting Authority" shall mean the West Virginia Division of Environmental Protection.

§45-33-4. Adoption of Standards.

4.1 The Director hereby adopts and incorporates by reference the following provisions of the United States Environmental Protection Agency Acid Rain Program effective July 1, 1997, as amended by the Federal Register through June 1, 1998: 40 CFR Part 72, "Permits Regulation", including all Subparts and Appendices; 40 CFR Part 74, "Sulfur Dioxide Opt-Ins", including all Subparts; 40 CFR Part 75, "Continuous Emissions Monitoring", including all Subparts and Appendices; 40 CFR Part 76, "Nitrogen Oxides Emissions Reduction Program", including all Appendices; and 40 CFR Part 77, "Excess Emissions". These provisions are adopted for the purposes of implementing an acid rain program that meets the requirements of Title IV of the federal Clean Air Act, as amended.

§45-33-5. Inconsistency Between Rules.

The provisions of this rule shall not be construed as exempting persons subject to this rule from compliance with any other provisions of the Clean Air Act, including the provisions of Title I of the Clean Air Act relating to applicable National Ambient Air Quality Standards, the State Implementation Plan, or any other rules of the West Virginia Division of Environmental Protection, except as expressly provided under Title IV of the Clean Air Act; provided however, that in the event of any inconsistency between the provisions of this rule and any provisions of 45CSR30, the provisions of this rule shall take precedence and shall govern the issuance, denial, revision, reopening, renewal, and appeal of the Acid Rain provision of an operating permit.

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H. B. 2485

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

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

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 acid rain provisions and permits.

16 *Be it enacted by the Legislature of West Virginia:*

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

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

23 **§64-3-1. Division of environmental protection.**

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

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

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

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

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

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

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

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

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

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17 NOTE: The purpose of this bill is to authorize the
18 Division of Environmental Protection to promulgate a
19 legislative rule relating to Acid Rain Provisions and
20 Permits.

21
22 Strike-throughs indicate language that would be
23 stricken from the present law, and underscoring indicates
24 new language that would be added.