

WEST VIRGINIA
SECRETARY OF STATE

Joe Manchin, III

ADMINISTRATIVE LAW DIVISION

FORM #5

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

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

CITE AUTHORITY: W.Va. Code §22-5-1 et seq.; 45CSR2

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 2A

TITLE OF RULE BEING PROPOSED: Testing, Monitoring, Recordkeeping And
Reporting Requirements Under 45CSR2

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS March 5, 2001

Karen G. Watson, Counsel
Authorized Signature

\$11.40



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0515
Fax No: (304)759-0526

West Virginia Bureau of Environment

Bob Wise
Governor

Randy Huffman
Acting Commissioner

February 1, 2001

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

RE: 45CSR2A - "Testing, Monitoring, Recordkeeping and
Reporting Requirements Under 45CSR2"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-
referenced Interpretive Rule with your Office as "Notice of
Agency Adoption of an Interpretive Rule."

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

Sincerely yours,

Randy Huffman
Acting Commissioner

RH:cc

cc: Karen Watson
Carrie Chambers

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

RULE TITLE: 45CSR2A - "Testing, Monitoring, Recordkeeping, and Reporting Requirements"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq. and WV 45CSR2

B. SUMMARY OF RULE:

45CSR2A "Testing, Monitoring, Recordkeeping, and Reporting Requirements" provides guidance on the agency's testing, monitoring, recordkeeping and reporting requirements for the owner/operators of fuel burning indirect heat exchangers subject to 45CSR2.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

45CSR2 "To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers" is a legislative rule which establishes particulate matter weight and visible emission standards for fuel burning units operated in West Virginia. The legislative rule authorizes the Director to require sources to demonstrate compliance with these standards by testing and monitoring their emissions, keeping records of such testing and monitoring and submitting the results to the Director. 45CSR2 provides the Director will specify the exact manner and frequency of testing, monitoring, recordkeeping and reporting. It is through the adoption of this interpretive rule that the Director will prescribe the specific requirements for testing, monitoring, recordkeeping and reporting which are applicable to a source, depending upon its size and nature. The proposed interpretive rule is the result of a thorough review in a stakeholder process that was inclusive of the Office of Air Quality, representatives of the regulated community, concerned citizens and the environmental community.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR2A - "Testing, Monitoring, Recordkeeping, and Reporting Requirements"

Type of Rule: _____ Legislative Interpretive _____ Procedural

Agency: Office of Air Quality

Address: 7012 MacCorkle Avenue, SE

Charleston, WV 25304

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates: The adoption of 45CSR2A will have minimal effect on the costs to the Office of Air Quality and implementation will be absorbed into the existing work environment. Costs are covered under previous budget estimates.

3. Objectives of these rules: The objective of this rule is to provide guidance and clarification on OAQ's testing, monitoring, recordkeeping and reporting for sources covered by 45CSR2 "To Prevent and Control Particulate Air Pollution requirements from Combustion of Fuel in Indirect Heat Exchangers," which is part of the West Virginia State Implementation Plan approved by the USEPA for attainment and maintenance of attainment of the National Ambient Air Quality Standards for particulate matter.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

1. The rule proposed herein may have some minimal effect on the costs to operators of large coal-fired burning units to cover additional testing, monitoring, recordkeeping and reporting requirements.

2. Additionally, the rule may have some limited economic impact on a few large industrial coal-fired boilers which may be required to install continuous opacity monitoring systems (COMS). These costs, however, are fairly marginal compared to the costs already incurred by industry at large, since many sources are required to utilize COMS pursuant to some other rule or enforcement order.

3. The rule may result in decreased costs for units combusting wood or natural gas because of reduced recordkeeping requirements.

C. Economic Impact on Citizens/Public at Large.

There will be no economic impact on the citizens or public at large in West Virginia resulting from the proposed rule.

Date: 11/17/00

Signature of Agency Head or Authorized Representative

Carrie J. Chamb

FILED

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

FEB 2 10 57 AM '01

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 2A
TESTING, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS
UNDER 45CSR2

§45-2A-1. General.

1.1. Scope. -- Series 2A provides guidance and clarification for complying with the testing, monitoring, recordkeeping and reporting requirements of 45CSR2 - "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers". This rule is an interpretive rule, not a legislative rule, as those terms are defined under W. Va. Code §29A-1-2.

1.2. Authority.-- W. Va. Code §§22-5-1 et seq. and WV 45CSR2.

1.3. Filing Date. -- February 2, 2001.

1.4. Effective Date. -- March 5, 2001.

§45-2A-2. Definitions.

2.1. "Alternative fuel" means a fuel other than pipeline quality natural gas, distillate oil, wood or coal.

2.2. "Continuous Opacity Monitoring System" or "COMS" means an opacity monitor and associated system installed, calibrated, operated and maintained as specified in 40 CFR Part 60, Appendix B, Performance Specification 1 (PS1) and 40 CFR Part 60, Appendix F or as specified in 40 CFR Part 75.

2.3. "Excursion" means: (1) measured emissions exceeding the applicable standards set forth in sections 3 and 4 of 45CSR2; or (2)

operating parameters outside the range set forth in an approved monitoring plan, which may or may not result in measured emissions exceeding the applicable standards set forth in section 3 of 45 CSR2.

2.4. "Method 9 readings" means visible emissions tests conducted in accordance with 40 CFR Part 60, Appendix A, Method 9.

2.5. "Simultaneous" means that all compliance test runs for all similar fuel burning units at the plant are conducted within a seven (7) day period.

2.6. "Testing Cycle" means the frequency at which a fuel burning unit(s) is required to perform testing.

2.6.a. Cycle '1' means that testing shall be performed within twelve (12) months from the date of the previous test, but no earlier than six (6) months from the date of the previous test.

2.6.b. Cycle '2' means that testing shall be performed within twenty-four (24) months from the date of the previous test, but no earlier than twelve (12) months from the date of the previous test.

2.6.c. Cycle '3' means that testing shall be performed within thirty-six (36) months from the date of the previous test, but no earlier than eighteen (18) months from the date of the previous test.

2.7. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in WV CSR §45-2-2 or W. Va. §§ 22-5-1 et seq.

§45-2A-3. Applicability.

3.1. This rule applies to any fuel burning unit(s) having a design heat input (DHI) over ten (10) million BTU/hr (mmBTU), except as follows:

3.1.a. The owner or operator of a fuel burning unit(s) which combusts only natural gas shall be exempt from sections 5 and 6. The Director reserves the right to require testing pursuant to subdivisions 8.1.b and 8.1.c. of 45CSR2.

3.1.b. The owner or operator of a fuel burning unit(s) with a DHI of less than 100 mmBTU/hr shall be exempt from the periodic testing requirements of section 5, and the monitoring requirements of section 6. The Director reserves the right to require testing pursuant to subdivisions 8.1.b. and 8.1.c. of 45CSR2.

§45-2A-4. Registration of Allowable Emission Rates for Individual Stacks.

4.1. The owner or operator shall conduct periodic simultaneous weight emission tests of all similar fuel burning units at each source, except where the owner or operator registers allowable emission rates for individual stacks in accordance with subsection 4.2 of this rule. The frequency and performance of periodic simultaneous weight emission tests shall conform to the provisions of subsection 5.2.

4.2. In accordance with subsection 4.2 of 45CSR2, the owner or operator may register an allowable emission rate for each individual

stack, in pounds per hour, determined as provided in Appendix B.

§45-2A-5. Testing Requirements.

5.1. Visible Emission Testing.

5.1.a. The owner or operator shall periodically conduct or have conducted, visible emission tests to determine the compliance of each stack with the visual emission standard set forth in section 3 of 45CSR2. Visible emission tests shall be conducted in accordance with 40 CFR Part 60, Appendix A, Method 9 (Method 9), or with COMS. Method 9 visible emission tests shall be conducted at a frequency established in the approved monitoring plan specified in subsection 6.3 and shall also be conducted in conjunction with all weight emission testing.

5.2. Weight Emission Testing.

5.2.a. The owner or operator shall periodically conduct or have conducted, weight emission tests to determine the compliance of each fuel stack with the weight emission standards set forth in section 4 of 45CSR2. Weight emission tests shall be conducted in accordance with 45CSR2 Appendix "Compliance Test Procedures for 45CSR2" or other equivalent EPA approved method approved by the Director. The baseline compliance test shall be conducted within a time period starting twelve (12) months prior to and ending twelve (12) months after the effective date of this interpretive rule for existing fuel burning unit(s) and within one hundred eighty (180) days of start-up for new fuel burning unit(s). The weight emission test results of the baseline test shall establish the weight emission testing cycle to be used for subsequent testing. Weight emission tests shall be conducted at a frequency established in the following tables:

Baseline Weight Emission Test Results	Resulting Testing Cycle
≤50% of weight emission standard	Cycle 3
between 50% and 80% of weight emission standard	Cycle 2
≥80% of weight emission standard	Cycle 1

Testing Cycle	Test Results	Retesting Cycle
Cycle 1	After three successive tests indicate mass emission rates ≤50% of weight emission standard	Cycle 3
	After two successive tests indicate mass emission rates < 80% of weight emission standard	Cycle 2
	Any test indicates a mass emission rate ≥80% of weight emission standard	Cycle 1
Cycle 2	After two successive tests indicate mass emission rates ≤50% of weight emission standard	Cycle 3
	Any test indicates a mass emission rate < 80% of weight emission standard	Cycle 2
	Any test indicates a weight emission rates ≥80% of weight emission standard	Cycle 1

Testing Cycle	Test Results	Retesting Cycle
Cycle 3	Any test indicates a mass emission rate ≤50% of weight emission standard	Cycle 3
	Any test indicates a mass emission rate between 50% and 80% of weight emission standard	Cycle 2
	Any test indicates a mass emission rate ≥80% of weight emission standard	Cycle 1

5.3. The Director reserves the right to require testing pursuant to subdivisions 8.1.b and 8.1.c. of 45CSR2.

§45-2A-6. Visible Emission Monitoring Plan Requirements.

6.1. The owner or operator of a fuel burning unit(s) shall submit to the Director for approval a monitoring plan that describes the method the owner or operator will use to monitor compliance with the visible emission standard set forth in section 3 of 45CSR2. The owner or operator of a fuel burning unit may use a COMS, which shall be deemed to satisfy all of the requirements of an approved monitoring plan, or a monitoring plan as specified in subsection 6.3, in accordance with the provisions of this section.

6.1.a. Monitoring plans shall be submitted to the Director for approval no later than February 28, 2001, as specified in paragraph 8.2.a.2 of 45CSR2.

6.1.b. Approval or denial of such plans shall be issued no later than August 31, 2001, or 6 months after submittal, whichever is later,

as specified in paragraph 8.2.a.2 of 45CSR2, provided that the owner or operator may presume approval of a monitoring plan if the Director has neither approved nor denied the plan by the date specified in this subdivision.

6.1.c. Monitoring plans shall become effective upon approval.

6.2. COMS Based Monitoring Plan.

6.2.a. The owner or operator of a fuel burning unit(s) with a DHI of 250 mmBTU/hr or greater shall use a COMS to satisfy the requirements of an approved monitoring plan, except where:

6.2.a.1. The source is able to demonstrate compliance with the applicable particulate matter and opacity standards without utilization of particulate matter control equipment. Such demonstration may include, but not be limited to, Method 9 readings, stack test data, AP-42 calculations, or other data as approved by the Director.

6.2.b. The Director may exempt a source from the requirements of subdivision 6.2.a if the Director determines that the installation of a COMS would not provide an accurate determination of emissions or that the installation of a COMS may not be implemented by a source due to physical source limitations or to extreme economic reasons. The Director shall require such an exempted source to fulfill alternative emission monitoring and reporting requirements.

6.2.c. COMS, if required, shall be installed, operational and certified within twelve (12) months of the date of monitoring plan approval.

6.3. Non-COMS Based Monitoring Plan.

6.3.a. For sources not utilizing COMS as the method of monitoring compliance with the opacity limit, the approved monitoring plan shall contain at a minimum the following requirements:

6.3.a.1. Provisions to take Method 9 readings a minimum of once per month per stack during months when the source operated at normal conditions for at least twenty-four (24) consecutive hours and weather/lighting conditions were conducive to taking proper Method 9 readings;

6.3.a.2. a list of operating parameters to be monitored;

6.3.a.3. the monitoring method and frequency for each operating parameter to be monitored;

6.3.a.4. the nominal range for each operating parameter to be monitored;

6.3.a.5. an explanation of how the operating parameters to be monitored were chosen, and how they are indicative of compliance;

6.3.a.6. an explanation of how the nominal ranges were established;

6.3.a.7. a schedule for installation and operation of any additional monitoring equipment to be installed for purposes of complying with this rule; and

6.3.a.8. a response plan to be implemented during excursions which shall include, but not be limited to, the following:

6.3.a.8.A. for excursions of any operating parameter exceeding one hour, the owner or operator shall perform Method 9 readings for a minimum of six (6) minutes for each hour during the excursion. Such Method

9 readings shall continue each hour until four (4) successive six-minute observations demonstrate compliance.

6.4. In addition to other actions taken by the Director, the Director may require the monitoring plan to be revised when the Director has reason to believe that the nominal ranges established for operating parameters in the monitoring plan are no longer indicative of compliance or when the Director has reason to believe that excursions are excessive.

6.5. Notwithstanding any other provisions of this rule, the Director reserves the right to require the installation of COMS pursuant to subsection 3.2 of 45CSR2, in any case where the Director deems it necessary to determine compliance with the standards in 45CSR2.

§45-2A-7. Recordkeeping and Reporting Requirements.

7.1. Recordkeeping.

7.1.a. The owner or operator of a fuel burning unit(s) shall maintain records of the operating schedule, and the quality and quantity of fuel burned in each fuel burning unit as specified in paragraphs 7.1.a.1 through 7.1.a.6, as applicable.

7.1.a.1. For fuel burning unit(s) which burn only pipeline quality natural gas, such records shall include, but not be limited to, the date and time of start-up and shutdown, and the quantity of fuel consumed on a monthly basis.

7.1.a.2. For fuel burning unit(s) which burn only distillate oil, such records shall include, but not be limited to, the date and time of start-up and shutdown, the quantity of fuel consumed on a monthly basis and a BTU analysis for each shipment.

7.1.a.3. For fuel burning unit(s) which burn only wood, such records shall include, but not be limited to, the date and time of start-up and shutdown, the quantity of fuel consumed on a daily basis and a quarterly ash and BTU analysis.

7.1.a.4. For fuel burning unit(s) which burn only coal, such records shall include, but not be limited to, the date and time of start-up and shutdown, the quantity of fuel consumed on a daily basis and an ash and BTU analysis for each shipment.

7.1.a.5. For fuel burning unit(s) which burn an alternative fuel(s), such records shall include, but not be limited to, the date and time of start-up and shutdown, and fuel quality analysis as approved by the Director.

7.1.a.6. For fuel burning unit(s) which burn a combination of fuels, the owner or operator shall comply with the applicable recordkeeping requirements of paragraph 7.1.a.1 through paragraph 7.1.a.5. for each fuel burned.

7.1.b. Records of all required monitoring data and support information shall be maintained on-site for a period of at least five (5) years from the date of monitoring, sampling, measurement or reporting. Support information includes all calibration and maintenance records and all strip chart recordings for continuous monitoring instrumentation, and copies of all required reports.

7.2. Exception Reporting.

7.2.a. With respect to excursions associated with measured emissions under Section 4 of 45CSR2, compliance with the reporting and testing requirements under the Appendix to 45CSR2 shall fulfill the

requirement for a periodic exception report under subdivision 8.3.b of 45CSR2.

7.2.b. COMS Based Monitoring - In accordance with the provisions of this subdivision, each owner or operator employing COMS as the method of monitoring compliance with opacity limits shall submit a "COMS Summary Report" and/or an "Excursion and COMS Monitoring System Performance Report" to the Director on a quarterly basis; the Director may, on a case-by-case basis, require more frequent reporting if the Director deems it necessary to accurately assess the compliance status of the fuel burning unit(s). All reports shall be postmarked by the thirtieth (30th) day following the end of each calendar quarter. The COMS Summary Report shall contain the information and be in the format shown in Appendix A unless otherwise specified by the Director.

7.2.b.1. If the total duration of excursions for the reporting period is less than one percent (1%) of the total operating time for the reporting period and monitoring system downtime for the reporting period is less than five percent (5%) of the total operating time for the reporting period, the COMS Summary Report shall be submitted to the Director; the Excursion and COMS Monitoring System Performance report shall be maintained on-site and shall be submitted to the Director upon request.

7.2.b.2. If the total duration of excursions for the reporting period is one percent (1%) or greater of the total operating time for the reporting period or the total monitoring system downtime for the reporting period is five percent (5%) or greater of the total operating time for the reporting period, the COMS Summary Report and the Excursion and COMS Monitoring System Performance Report shall both be submitted to the Director.

7.2.b.3. The Excursion and COMS Monitoring System Performance Report shall be in a format approved by the Director and shall include, but not be limited to, the following information:

7.2.b.3.A. The magnitude of each excursion, and the date and time, including starting and ending times, of each excursion;

7.2.b.3.B. Specific identification of each excursion that occurs during start-ups, shutdowns, and malfunctions of the facility;

7.2.b.3.C. The nature and cause of any excursion (if known), and the corrective action taken and preventative measures adopted (if any);

7.2.b.3.D. The date and time identifying each period during which quality-controlled monitoring data was unavailable, except for zero and span checks, and the reason for data unavailability and the nature of the repairs or adjustments to the monitoring system; and

7.2.b.3.E. When no excursions have occurred or there were no periods of quality-controlled data unavailability, and no monitoring systems were inoperative, repaired, or adjusted, such information shall be stated in the report.

7.2.c. Non-COMS Based Monitoring - Each owner or operator employing non-COMS based monitoring shall submit a "Monitoring Summary Report" and/or an "Excursion and Monitoring Plan Performance Report" to the Director on a quarterly basis; the Director may, on a case-by-case basis, require more frequent reporting if the Director deems it necessary to accurately assess the compliance status of the fuel burning unit(s). All reports shall be postmarked by the thirtieth (30th) day following the end of each calendar quarter. The

Monitoring Summary Report shall be in a format approved by the Director.

7.2.c.1. If the total number of excursions for the reporting period is less than one percent (1%) of the total number of readings for the reporting period and the number of readings missing for the reporting period is less than five percent (5%) of the total number of readings agreed upon in the monitoring plan for the reporting period, the Monitoring Summary Report shall be submitted to the Director; the Excursion and Monitoring System Performance report shall be maintained on-site and shall be submitted to the Director upon request.

7.2.c.2. If the number of excursions for the reporting period is one percent (1%) or greater of the total number of readings for the reporting period or the number of readings missing for the reporting period is five percent (5%) or greater of the total number of readings agreed upon in the monitoring plan for the reporting period, the Monitoring Summary Report and the Excursion and Monitoring Plan Performance Report shall both be submitted to the Director.

7.2.c.3. The Excursion and Monitoring Plan Performance Report shall be in a format approved by the Director and shall include, but not be limited to, the following information:

7.2.c.3.A. The magnitude of each excursion, and the date and time, including starting and ending times, of each excursion;

7.2.c.3.B. Specific identification of each excursion that occurs during start-ups, shutdowns, and malfunctions of the facility;

7.2.c.3.C. The nature and cause of any excursion (if known), and the

corrective action taken and preventative measures adopted (if any);

7.2.c.3.D. The date and time identifying each period during when data is unavailable, and the reason for data unavailability and the corrective action taken; and

7.2.c.3.E. When no excursions have occurred or there were no periods of data unavailability, such information shall be stated in the report.

7.2.d. To the extent that an excursion is due to a malfunction, the reporting requirements in section 9 of 45CSR2 shall be followed.

Appendix A - COMS Summary Report

Pollutant	Opacity		
Company	_____		
Emission Limitation	_____		
	Regulation	Limit	Units
	45 CSR 2	10	%
			Period
			6 minute average

Reporting Period: Calendar Quarter _____ to _____

Monitor Manufacturer: _____

Model Number: _____

Date of Last Certification or Audit: _____

Process Unit(s) Description: _____

Emissions Data Summary

1. Duration of excess emissions in reporting period due to:

a. Start/up	45 CSR 2	minutes
b. Soot Blowing		minutes
c. Malfunctions due to Control Equipment Problems		minutes
d. Malfunctions due to Process Problems		minutes
e. Other Known Causes		minutes
f. Unknown Causes		minutes

2. Total Duration _____ minutes

3. Percent Excess Emissions _____ %

COMS Performance Summary

1. COMS Downtime in reporting period due to:

a. Monitor Equipment Malfunction		minutes
b. Other Equipment Malfunction		minutes
c. Quality Assurance Calibration		minutes
d. Other Known Causes		minutes
e. Unknown Causes		minutes

2. Total COMS Downtime _____ minutes

3. Percent COMS Downtime _____ %

Notes:

- Separate Summary Reports are required for each boiler in the system when it has separate monitoring equipment.
- Total source operating time means the total time which the affected source is operating, including all periods of start-up, shut-down, malfunction, soot blowing or COMS downtime as those times are defined under the rule.
- All times for opacity are to be reported in minutes.
- On a separate page describe any changes since the last reporting period to the COMS process or controls.
- Other reports may be necessary to meet requirements.

Appendix B - Registration

Table 1 - Sum of Design Heat Inputs for Similar Units					
Type 'a'		Type 'b'		Type 'c'	
(A) Unit ID	(B) DHI (mmBTU/hr)	(C) Unit ID	(D) DHI (mmBTU/hr)	(E) Unit ID	(F) DHI (mmBTU/hr)
Sum of DHI for all Type 'a' units		Sum of DHI for all Type 'b' units		Sum of DHI for all Type 'c' units	

Table 2 - Weight Emission Limits for Similar Units			
(A)	(B) Total Design Heat Input (mmBTU/hr)	(C) Factor from 45CSR2, Sub-section 4.1 (lb/mmBTU)	(D) Weight Emission Rate (lb/hr) ^{1,2}
Sum of DHI for all Type 'a' units		.05	0
Sum of DHI for all Type 'b' units		.09	0
Sum of DHI for all Type 'c' units		N/A, look up lb/hr limit in 45CSR2, Table 45-2	

¹ If the calculated weight emission limit for Type 'a' units is greater than 1200 lbs/hr, then 1200 lbs/hr is the limit.

² If the calculated weight emission limit for Type 'b' units is greater than 600 lbs/hr, then 600 lbs/hr is the limit.

Table 3 - Registration of Standard Individual Stack Emission Rates				
(A) Stack ID	(B) Sum of DHI for all units venting thru stack (mmBTU/hr)	(C) Sum of DHI for all Similar Units (Table 2, Column B) (mmBTU)	(D) Wt. Emission Rate for all Similar Units (Table 2, Column D) (mmBTU)	(E) Stack Emission Rate (lb/hr) [(B/C) * D = E]
Stack Allowable Emission Rate (lb/hr)				

In Table 4 below, the owner or operator may register individual stack allowable emission rates, differing from those calculated above, as provided for in 45CSR2, subsection 4.2.

Table 4 - Registration of Alternative Stack Emission Rates		
(A) Stack ID	(B) Identify each unit venting thru stack	(C) Alternative Stack Emission Rate (lb/hr)
Sum of Alternative Stack Emission Rates (lb/hr)¹		

¹ The sum of the Alternative Stack Emission Rates for similar units shall not exceed the Weight Emission Rates for all Similar Units in Table 2, Column D.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

OFFICE OF AIR QUALITY

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

2001 JAN -2 P 2:03

RECEIVED

DEC 28 2000

Mr. Edward L. Kropp, Chief
Office of Air Quality
7012 MacCorkle Ave, SE
Charleston, West Virginia 25304-2943

Dear Mr. Kropp:

Enclosed please find the Environmental Protection Agency comments regarding Interpretive Rules 45CSR2A and 45CSR10A which address "Testing, Monitoring, Recordkeeping, and Reporting Requirements." We appreciate the opportunity to comment on these interpretive rules. If you have any questions, please contact me at 215-814-2654 or Ruth Knapp of my staff at 215-814-2191.

Sincerely,

A handwritten signature in cursive script, appearing to read "Judith M. Katz".

Judith M. Katz,
Director Air Protection Division

Comments on Interpretative Rule 45CSR2A

1. Definition 2.3 should be revised to address the following issues. First, the language that states "including those exempted during start-up, shutdown and malfunction" should be modified to read "including all periods of startup, shutdown and malfunction" if the intent is to define all instances where control equipment or operational parameters are outside the range set forth in the monitoring plan. The second part of the definition regarding excursion states, excursion "also means measured emissions exceeding the applicable standards set forth in section 3 and 4 of 45CSR2" and its use later in the rule is a bit confusing. Another term such as "exceedances" or "excess emissions" should be defined and used to refer to instances where mass emission limits or opacity limits are being exceeded.
2. Section 6.2.a.1 indicates that a source may not need to use continuous opacity monitoring system (COMS) if the source is "able to comply with applicable particulate matter and opacity standards without utilization of particulate matter control equipment." This section should contain additional criteria to indicate how compliance, for this exception, will be determined. An example of such criteria might be, the source must show compliance with the applicable opacity standard on three different days using Method 9 and must perform 1 stack test to show compliance with applicable mass emission standards.

Comments on Interpretative Rule 45CSR10A

1. Section 5.1.a refers to section 3 of 45CSR10 which establishes limits of emissions in pounds of SO₂ per unit of design heat input (DHI). The section contains a table of testing frequency based upon the percent of allowable sulfur content. Since sulfur content is never set as allowable, West Virginia should provide a method for deriving one unit from the other. It would be preferable to have the table based upon allowable pounds per DHI.
2. Section 6.1.c refers to fuel with a sulfur content greater than or equal to 90% of the allowable sulfur content. As noted above, there is no "allowable sulfur content." There is only a calculated sulfur content based upon calculations.
3. Section 6.3.b.2 refers to triggering the 45 grains per cubic foot threshold. This threshold should actually be 45 grains per 100 cubic feet.

American Electric Power

1 Oliveria Plaza

C

E

Post-it* Fax Note	7671	Date	# of pages ▶ 3
To	T. Mower	From	G. Wooten
Co./Dept.	OAQ	Co.	AEP
Phone #	304-926-3638	Phone #	614-223-1262
Fax #	304-926-3637	Fax #	



January 2, 2001

Mr. Edward L. Kropp, Chief
Office of Air Quality
West Virginia Division of Environmental Protection
7012 MacCorkle Avenue SE
Charleston, West Virginia 25304-2943

RE: Comments on 45 CSR 2A and 45 CSR 10A Interpretive Rules

Dear Chief Kropp:

The operating companies of the American Electric Power System, including Ohio Power Company, Appalachian Power Company, and Central Operating Company, (collectively referred to as "AEP") offer the following comments on the proposed interpretive rules establishing testing, monitoring, recordkeeping and reporting requirements under legislative rules 45 CSR 2 and 45 CSR 10. AEP also adopts and incorporates by reference the comments submitted on behalf of the West Virginia Chamber of Commerce and the West Virginia Manufacturers Association, of which the AEP companies are members.

AEP was a faithful participant in the Office of Air Quality ("OAQ") convened 45 CSR 2A and 10A stakeholder workgroup. During these meetings, numerous recommendations and suggestions were presented to the OAQ for consideration in development of the proposed interpretive rules. AEP extends its compliments to the OAQ staff for the long hours and hard work committed to this effort. AEP is supportive of the stakeholder process as a forum available for various parties to listen, learn, and draft state air rule. However, AEP does believe that OAQ has in some cases overstepped the bounds in the development of this interpretive rule. For example, the interpretive rule not only was used to clarify the legislative rule, but it was also used to expand the authority of the OAQ by eliminating monitoring and testing options for some sources and establishing new stack by stack emission limits for others. While AEP does not support efforts to increase the stringency of the legislative rule through an interpretive rule, AEP does support the development of interpretive rules for the purpose of clarifying or simplifying legislative rules.

45 CSR 2A:

§45-2A-5.1.a: One issue that AEP consistently pointed out during the stakeholder processes (both for the legislative and interpretive rulemakings) and one that AEP still feels is appropriate to comment on is what appears to be an apparent melding of the terms "testing" and "monitoring." In this particular section, the paragraph starts out by stating the requirement to conduct tests for the purpose of determining compliance. However, later in the paragraph, sources are directed to include a schedule for conducting tests in their monitoring plans. As a result "testing" and "monitoring" requirements are being blended. We believe the agency should make an effort to clarify that while sources are generally required to perform periodic testing to demonstrate compliance, monitoring is a separate requirement, and should be performed on a more frequent basis. AEP suggests that OAQ define the two terms ("testing" and "monitoring") in the definitions section of the interpretive rule. When rules such as 45 CSR 2 and 45 CSR 10

were originally drafted, there was not an intention of requiring sources to continuously demonstrate compliance. However, with the melding of the requirements to periodically demonstrate (test) compliance and continuously monitor, sources are effectively being required to demonstrate compliance continuously. The standard was simply not set with this type of requirement in mind.

§45-2A-5.2.a: For convenience, AEP suggests OAQ consider placing a table (similar to the table in §45-10A-5.1.a) in this section that describes the testing cycle. This could be as simple as incorporating the tables from Appendix A into this section.

§45-2A-6.2.a: One issue that AEP consistently addressed during the interpretive rulemaking stakeholder process and still feels is appropriate to comment on is the OAQ's decision to force sources with a design heat input greater than 250 mmBTU/hr to use COMS as the approved monitoring plan method. §45-2-3.2 and §45-2-8.2.a of the legislative rule clearly give fuel burning sources the choice of using Method 9 or COMS not only as the method for determining compliance, but also for monitoring emissions. AEP believes that in requiring specific sources to use a "continuous" method of "monitoring" compliance, the OAQ is effectively increasing the stringency of this standard. One issue that makes the proposed language particularly troublesome is the apparent melding of the terms "testing" and "monitoring" (see comment for §45-2A-5.1.a). By requiring the use of COMs, combined with the blending of "testing" and "monitoring" terms, the OAQ is effectively creating a requirement for larger fuel burning sources to continuously demonstrate compliance. AEP believes that a more appropriate requirement would be to use COMS as an indicator of compliance and that the approved USEPA approved Test Method 9 be used for periodic demonstrations of compliance. AEP further believes that when the 10% standard was originally established, compliance with that standard was clearly intended to be determined using a test method (Method 9) that is performed periodically, not continuously.

§45-2A-6.3.a.7.A: AEP suggests OAQ reconsider the number of Method 9 readings that must be taken each hour during an excursion period under a non-COMs based monitoring plan. A properly completed 6-minute USEPA Method 9 test is sufficient to determine whether or not a source is back in compliance with the standard. Conducting 3 additional tests will provide little, if any, additional value. It would seem more appropriate to only require 1 properly conducted Method 9 test each hour. The 1 test-per-hour policy could potentially have a positive impact on the environment by freeing up an employee to troubleshoot the cause of the exceedance and correct any problems discovered.

§45-2A-7.2.a: Consistent with a similar requirement under §45-2-7.2.b.3.E, AEP believes that even when a mass emissions test has not been completed during a particular quarter, the source should still submit a report to the OAQ stating that no mass emission tests were conducted during that period.

45 CSR 10A:

§45-10A-5.1.a: The table presented in this section may complicate the determination of testing requirements. While the idea of a table is excellent, AEP believes that the introduction of a new term, "Allowable Sulfur Content" only complicates the determination. Furthermore, the table introduces a new standard or parameter that must be determined during test procedures. AEP suggests that OAQ consider revising the table so that the standard for determining testing frequency be consistent with the standard (pounds per hour) cited in §45-10-3. An alternative would be to use the lb/mmBtu emission rate listed in §45-10-3.

§45-10A-6.1.a: Consistent with discussions during the stakeholder process, AEP suggests that OAQ clarify that CEMS data used to monitor compliance with SO₂ limits under 45 CSR 10 be unbiased (no bias adjustment factor) and unsubstituted. While OAQ supported this method of determining CEMS based emissions, it appears that insertion of language describing the data as unbiased and unsubstituted was overlooked.

§45-10A-6.1.b: Another issue that AEP consistently commented on during the interpretive rulemaking stakeholder process and still feels is appropriate to address is OAQ's decision to require type "a" sources to use CEMS as the approved monitoring plan method. §45-10-8.2.c of the legislative rule clearly gives fuel burning sources the choice of using Method 6, CEMS or fuel sampling and analysis, as the method for demonstrating compliance. AEP believes that by requiring specific sources to use a continuous method of "monitoring" compliance that the OAQ is effectively increasing the stringency of the standard for select sources. One issue that makes this position by OAQ particularly troublesome is again the apparent melding of the terms "testing" and "monitoring". By forcing the use of CEMs, combined with the blending of "testing" and "monitoring" terms, the OAQ is effectively creating a requirement for electric generating sources to continuously demonstrate or test for compliance. AEP believes that when the SO₂ standards in 45 CSR 10 were originally established, compliance with those standards was clearly intended to be determined using a test method (Method 6) that is performed periodically, not continuously.

§45-10A-7.2: During the stakeholder process, a document was circulated by the OAQ (Entitled Appendix B: Monitoring Program Data Formats for WVDEP Office of Air Quality) that provided information on the format of data to be recorded and submitted under 45 CSR 10. It was clear in the Appendix B document that acid rain sources using 40 CFR 75 monitoring could use the 40 CFR 75 EDR reports to meet the reporting requirements of the OAQ. Late in the stakeholder process, Appendix B was eliminated due to the fact that time was running short and the individuals involved in the stakeholder process were not "computer experts". It was recognized that some of the recordkeeping and reporting requirements would have to be worked out during the monitoring plan development phase. While, the stakeholder group really had no choice but to drop this Appendix, it seems now to have presented some potential problems. The 40 CFR 75 monitoring, recordkeeping and reporting requirements are the most stringent and complete set of SO₂ monitoring, recordkeeping and reporting requirements being used today. It seems overly burdensome to require acid rain sources to implement additional recordkeeping and reporting requirements beyond those required in 40 CFR 75. Because AEP believes that this was simply overlooked, we ask that OAQ further clarify the rule by inserting language into 45 CSR 10A stating that submittal of the 40 CFR 75 EDR reports to the OAQ be deemed sufficient for meeting the requirements of recordkeeping and reporting under 40 CSR 10A.

In closing, AEP would like to thank the OAQ for the opportunity to have been a participant in the interpretive rulemaking process. We look forward to working with you on future similar projects. If you have any questions concerning our comments, please call me at (614) 223-1262.

Sincerely,



Gregory J. Wooten
Air Quality Services
Environmental Services Department

cc: M.R. Robida - Environmental Services
F. E. Blake - Environmental Services
J. C. Lytle - Environmental Services



PPG Industries, Inc.

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WV DIV OF ENVIR PROTECT
OFFICE OF AIR QUALITY

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December 21, 2000

W. Scott Pleskonko
Director, Environmental, Health & Safety
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RECEIVED

Edward L. Kropp, Chief
Office of Air Quality
West Virginia Division of Environmental Protection
7012 MacCorkle Avenue S.E.
Charleston, WV 25304-2943

RE: Comments to Proposed Interpretive Rules 45 CSR 2A and 45 CSR 10A

Dear Mr. Kropp:

PPG Industries, Inc. ("PPG") is hereby submitting comments to the interpretive rules recently proposed by the West Virginia Division of Environmental Protection ("DEP") regarding emission monitoring and testing. As an initial matter, PPG notes that proposed 45 CSR 2A and 45 CSR 10A are being promulgated as interpretive rules by the DEP and not as legislative rules. Accordingly, the proposed rules should not create new obligations or increase the stringency of existing legislative rules. PPG believes that interpretive rules 2A and 10A must provide sufficient flexibility so as not to definitively establish rights or obligations.

1. §45-2A-4. Registration of Allowable Emission Rates for Individual Stacks

This section provides the owner or operator with a choice between conducting simultaneous weight emission tests of all similar fuel burning units at a source or registering an allowable emission rate for each individual stack at the source.

First, an interpretive rule should not require the registration of an allowable emission limit for each stack. Such a requirement effectively increases the stringency of the underlying particulate matter limit established in 45 CSR 2 (which allows for a plant-wide limit). As discussed above, an interpretive rule cannot create new obligations or increase the stringency of existing legislative rules.

Second, the option of conducting stack testing on all stacks in order to demonstrate compliance with the applicable particulate matter limit in 45 CSR 2 appears reasonable provided the testing requirements are reasonable. PPG is concerned with the availability and allocation of resources (i.e., stack testing consultants and/or equipment) to conduct such testing "simultaneously" as indicated in the interpretive rule. PPG requests that the DEP allow for such stack testing over a reasonable period of time such that testing of all stacks at a source can be accomplished in a reasonable manner.

2. §45-2A-6 Visible Emission Monitoring Plan Requirements

First, PPG notes that the timeframe for submitting a monitoring plan is not included in the interpretive rule. Legislative rule 2 requires submission of a monitoring plan within 6 months of its effective date of August 31, 2000 (i.e., by February 28, 2001). PPG requests that the DEP confirm the date for submitting monitoring plans and consider clarifying the due date in interpretive rule 2A.

Second, subsection 6.2 generally requires a continuous opacity monitoring system ("COMS") for certain larger fuel burning units. PPG initially notes that legislative rule 2 does not mandate COMS but allows for alternative monitoring (e.g., periodic Method 9 observations or parametric monitoring). The DEP should not restrict a facility's options via an interpretive rule. Instead, DEP should consider emission sources on an individual basis in assessing whether a COMS will be required.

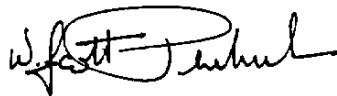
However, PPG does note that section 6.2.b provides for an exemption from the COMS requirements under certain conditions. PPG believes that the inclusion of this provision may provide sufficient flexibility to address situations on a case-by-case basis provided the DEP is reasonable in assessing individual situations. Accordingly, PPG supports the DEP's recognition of the ability to exempt sources from the COMS requirement. PPG intends to further explore alternate monitoring for opacity, particularly in light of the impact of the recognized error in COMS data.

3. §45-10A-4 Fuel Burning Units(s)—Registration of Allowable Emission Rates for Individual Stacks

As discussed with respect to interpretive rule 2A above, a requirement to register allowable emission rates for individual stacks cannot be imposed via interpretive rulemaking.

We appreciate the opportunity to submit these comments and trust that the DEP will give them serious consideration.

Sincerely,



W. Scott Pleskonko
Director, Environmental, Health & Safety

JACKSON & KELLY PLLC

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TELECOPY COVER SHEET

TO: EDWARD L. KROPP 926-3637

C/M# 90286 / 7539

FROM: KATHY G. BECKETT

TOTAL # OF PGS. INCLUDING COVER SHEET: 7

PLEASE CONTACT Susie Crouch at (304) 340-1013 IF ANY PROBLEMS OCCUR IN RECEIVING THIS FAX.

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PLEASE DELIVER THIS FAX IMMEDIATELY UPON RECEIPT.

January 2, 2001

Via Facsimile

Edward L. Kropp, Esquire
Deputy Director and Chief of the Office of Air Quality
West Virginia Division of Environmental Protection
7012 MacCorkle Avenue S.E.
Charleston, West Virginia 25304

Re: Interpretive Rules 2A and 10A

Dear Chief Kropp:

The enclosed comments are filed on behalf of the West Virginia Chamber of Commerce and the West Virginia Manufacturers Association in response to the Office of Air Quality's filing of interpretive rules 45 CSR 2A and 45 CSR 10A.

The filing of these two interpretive rules brings to closure issues that were left remaining after last year's efforts to update and streamline 45 CSR 2 and 45 CSR 10. The Chamber and WVMA applauds the Office of Air Quality for its willingness to address the remaining issues and appreciates the numerous open discussions that were held with all stakeholders concerning the text of these interpretive rules.

1. Interpretive Rule Format. The Chamber and WVMA question the agency's use of the interpretive rule format to address substantive regulatory revisions. The organizations do, however, support the use of interpretive rules to establish clarification and guidance for the underlying legislative rule and statutory law. An interpretive rule is defined as a rule that will provide information or guidance to the public regarding the agency's interpretations, policy or opinions upon the law enforced or administered by it. In some provisions of these interpretive rules, the agency is providing more than simply guidance. It is changing the underlying rule applicability. A case in point is the agency's requirement that continuous monitors be required of certain classes of facilities, where the underlying legislative rules clearly provide a range of monitoring options. A second case is the agency's requirement that sources register individual stack emission limits. This represents a departure from historical implementation of 45 CSR 2 and 45 CSR 10 and contradicts the overall cap on emissions that is provided under 45 CSR 2.

The types of changes that are suggested within 45 CSR 2A and 45 CSR 10A are of general application and future effect with enforcement implications which warrant the more thorough rulemaking process of a legislative rule.

For your information, the following statutory definitions for "interpretive rule" and "legislative rule" are provided. The Chamber and WVMA urge the agency not to exceed the statutory scope for interpretive rules.

W. Va. Code §29A-1-2(c) sets forth the definition of "interpretive rule" as

Every rule adopted by an agency independently of any delegation of legislative power which is intended by the agency to provide information or guidance to the public regarding the agency's interpretations, policy or opinions upon the law enforced or administered by it and which is not intended by the agency to be determinative of any issue affecting private rights, privileges or interests. An interpretive rule may not be relied upon to impose a civil or criminal sanction nor to regulate private conduct or the exercise of private rights or privileges nor to confer any right or privilege provided by law and is not admissible in any administrative or judicial proceeding for such purpose, except where the interpretive rule established conditions for the exercise of discretionary power as herein provided. However, an interpretive rule is admissible for the purpose of showing that the prior conduct of a person was based on good faith reliance on such rule. The admission of such rule in no way affects any legislative or judicial determination regarding the prospective effect of such rule. Where any provision of this code lawfully commits any decision or determination of fact or judgment to the sole discretion of any agency or any executive officer or employee, the conditions for the exercise of that discretion, to the extent that such conditions are not prescribed by statute or by legislative rule, may be established by an interpretive rule and such rule is admissible in any administrative or judicial proceeding to prove such conditions.

W. Va. Code §29A-1-2(c) sets forth the definition of "legislative rule" as

Every rule proposed or promulgated by any agency pursuant to this chapter. Legislative rule includes every rule which, when promulgated after or pursuant to authorization of the legislature, has (1) the force of the law, or (2) supplies a basis for the imposition of civil or criminal liability, or (3) grants or denies a specific benefit. Every rule which, when effective, is determinative on any issue affecting private rights, privileges or interests is a legislative rule. Unless lawfully promulgated as an emergency rule a legislative rule is only a proposal by the agency and has no legal force or effect until promulgated by specific authorization of the legislature. Except where otherwise specifically provided in this code, legislative rule does not include (a) findings or determinations of fact made or reported by an agency, including any such findings and determinations as are required to be made by any agency as a condition precedent to proposal of a rule to the legislature; (B) declaratory rulings issued by an agency pursuant to the provisions of section one [§29A-4-1], article four of this chapter; (C) orders, as defined in subdivision (e) of this section; or (D) executive orders or proclamations by the governor issued solely in the exercise of executive power, including executive orders issued in the event of a public disaster or emergency.

2. Registration of Individual Stacks.

45 CSR 2A and 45 CSR 10A. The Office of Air Quality itself admits that the historical application of the requirement to register individual stacks has been confusing. Those who have had experience with 45 CSR 2 and 45 CSR 10 recall that the context within which stacks were required to assign specific weight rates involved instances where modeling was required to demonstrate air quality impacts. The agency is now proposing that all regulated source stacks be registered for specific emission rates. Such a registration requirement is in direct conflict with the provisions of 45 CSR 2 and 10 which provide for a plantwide cap for the weight emission standards. By requiring registration of individual stacks, the interpretive rule is improperly limiting the underlying statutory rule language. A move from a plant wide limit to a stack-by-stack limit effectively increases the stringency of these standards. This increase in stringency is being imposed when there is no evidence that there are problems meeting the current PM or SO₂ NAAQS.

The agency explained its interest in emphasizing the registration as a need to prepare facilities for implementation of the Title V program.

The industry representatives, working with the agency, proposed that a more reasonable application of the requirements to register individual stacks under both 45 CSR 2A and 45 CSR 10A as follows:

The owner or operator of each Title V fuel burning unit(s) shall register the allowable emission rate for each individual stack. The emission rate, in pounds per hour, shall be determined as provided in Appendix E. Registration of design heat input shall not become an enforceable limit. Registration of an allowable emission rate shall be reviewed by the Director and if approved as part of a compliance schedule and/or permit limit shall become enforceable. Individual stack emission limits shall be representative of varied operating conditions and are not required to represent a single operating scenario of plantwide emissions.

This proposal was rejected based upon additional concerns of the agency concerning enforcement of 45 CSR 2 and 45 CSR 10. Industry continues to question how registration of individual stacks creates an enforcement tool the agency does not already possess. In light of the fact that the agency's proposal directly contradicts the plantwide limits for particulates and raises a serious concern about enforcement, we object to the requirement to register each stack under 45 CSR 2A and 45 CSR 10A.

3. Testing Requirements.

45 CSR 2A. The weight emission testing requirements under 45 CSR 2A, §5.2 reference Appendix A for establishing the frequency of testing. Appendix A refers to cycles which are defined in the definitions section. To reduce confusion, it is suggested that the definitions for each cycle be included in Appendix A or in the text of §5.2. In 45 CSR 10A §5.1.a the definitions for frequency are included in the discussion. Sources

working with both 10A and 2A may have a clearer understanding of these frequency requirements if they were handled in a similar fashion.

45 CSR 10A. *Manufacturing Process Source(s)*. The agency has included a provision under 45 CSR 10A, §5.2.b that provides that process sources utilizing a flare as a control device shall be exempt from compliance testing requirements. This provision was included in the interpretive rule in acknowledgment of the fact that testing of flares is inappropriate. The Chamber and WVMA endorse the agency's inclusion of this provision.

The agency has also included a provision under 45 CSR 10A, §5.2.c that allows for the petitioning of the Director by a source for an alternative to compliance testing. The Chamber and WVMA support the agency's inclusion of this provision which will allow for the regulated community to adequately demonstrate compliance via methods other than those specifically identified in 45 CSR 10A, §5.2.a.

Stack Testing Requirement Relative to CEMs Application. The agency has included in 45 CSR 10A, §5.4 an exemption from testing requirements for those fuel burning units, manufacturing process units, or combustion units that employ CEMs. The Chamber and WVMA applaud the agency's inclusion of this provision in light of the amount of data the CEMs will provide.

4. Monitoring Plan Requirements. When we initially discussed the agency developing a policy to assist in the implementation of 45 CSR 2 and 45 CSR 10 it was to establish the details as to what needs to be incorporated into the monitoring plans and related recordkeeping requirements. This section is an important part of what is needed to assure the regulated community is providing appropriate information.

45 CSR 2A. The Chamber and WVMA agree with the agency's position that operation of COMs is an adequate monitoring plan. Also of importance is the provision that allows those sources that are able to comply with the applicable particulate matter and opacity standards without utilization of particulate matter control equipment not to file a plan.

The Chamber and WVMA are also supportive of the 45 CSR 2A, §6.2.b which allows an exemption from the installation of COMs if the Director determines that COMs would not provide an accurate determination of emissions or that the installation of a COMs may be waived due to physical source limitations or to extreme economic reasons. This provision is similar to one in the Commonwealth of Pennsylvania. The Chamber and WVMA know of members who will be petitioning the Director to approve such exemptions we hope that the agency will give those petitions appropriate consideration.

Finally, the Chamber and WVMA find inclusion of non-COMs based monitoring plans as entirely consistent with 45 CSR 2. Not all sources should be required to install COMs, and Method 9 readings can readily and economically provide compliance data.

45 CSR 10A. Fuel Burning Units. The Chamber and WVMA agree with the recognition by the agency that the operation of CEMs is an adequate monitoring plan. Also of importance is the provision that those sources that burn fuel with a sulfur content equal to or greater than 90% of the allowable sulfur content are able to use CEMs or "as burned" fuel analysis. It is entirely appropriate for the agency to accept either type of monitoring.

Manufacturing Process Source(s). The Chamber and WVMA support the recognition by the agency that operation of CEMs is an adequate monitoring plan. Also of importance is the provision that establishes a threshold for those sources that may or may not need to operate CEMs. We are very supportive of the provision that allows for the ability to petition for an alternative to CEMs as set forth in 45 CSR 10A, §6.2.1.b. There will be sources filing such petitions and we look forward to working with the agency on approval of such as appropriate.

Combustion Sources. The Chamber and WVMA support the recognition by the agency that operation of CEMs is an adequate monitoring plan. Also of importance is the provision that establishes a threshold for those sources that may or may not need to operate CEMs.

5. Recordkeeping and Reporting Requirements.

45 CSR 2A. The Chamber and WVMA support 45 CSR 2A, §7.1.a.1 which establishes appropriate recordkeeping requirements for the burning of pipeline quality gas. We are also supportive of the agency's inclusion of provisions that address alternative fuels and combinations of fuels burned.

Generally, the provisions of 45 CSR 2A, §7.2 appropriately set forth the details of what the agency needs with respect to exception reports. The percentages for the excursions relative to total operating time appear to be inconsistent with those recognized in 45 CSR 10A, § 7.2. It is proposed that these requirements be made consistent with those of 45 CSR 10A.

45 CSR 10A. The Chamber and WVMA support the exemption from the recordkeeping provisions of 45 CSR 10A §7.1.a and §7.1.b provided such sources operate CEMs. We also support the schedule for the frequency of analysis of fuel quality based upon percentage of the compliance limit within which the facility operates. These are reasonable and appropriate standards.

With respect to 45 CSR 10A, §7.2 exception reporting a few clarifications need to be made. It was originally discussed that those reports generated pursuant to 40 CFR Part 75 would be sufficient for this section therefore avoiding the generation and filing of


additional reports to the state. Inclusion of language that recognizes this issue is essential.

In conclusion, the Chamber and WVMA appreciate the agency's work. We believe that the rules should be issued as legislative rules, but in the interim would support immediate application of these guidelines, with the revisions suggested above.

Additional comments have been filed by active industry participants of the stakeholder process. We commend the agency's careful consideration of those comments which address plant-specific concerns that are more generally addressed herein.

If you have any questions concerning these comments, please feel free to contact either Kathy Beckett (304) 340-1019 or John Pitner (304) 665-3485.

Very truly yours,


Kathy G. Beckett
WV Chamber of Commerce


John K. Pitner - Air Team Leader
WV Manufacturers Association

cc: Earl Billingsley
Laura Crowder
Karen Watson, Esquire

bc: Stephen G. Roberts
Karen Price

45CSR2A

TESTING, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS UNDER 45CSR2

RESPONSE TO COMMENTS

I. Commenter: U. S. Environmental Protection Agency (EPA)

Comment A: *Definition 2.3 should be revised to address the following issues. First, the language that states "including those exempted during start-up, shutdown and malfunction" should be modified to read "including all periods of startup, shutdown and malfunction" if the intent is to define all instances where control equipment or operational parameters are outside the range set forth in the monitoring plan. The second part of the definition regarding excursion states, excursion "also means measured emissions exceeding the applicable standards set forth in section 3 and 4 of 45CSR2" and its use later in the rule is a bit confusing. Another term such as "exceedances" or "excess emissions" should be defined and used to refer to instances where mass emission limits or opacity limits are being exceeded.*

Response A: The OAQ understands that it is using the term "excursion" broadly, but believes it is constrained by the way the term is used in the underlying legislative rule. OAQ has, however, made minor revisions to the language in the definition in an effort to clarify the meaning as much as possible.

Comment B: *Section 6.2.a.1 indicates that a source may not need to use continuous opacity monitoring system (COMS) if the source is "able to comply with applicable particulate matter and opacity standards without utilization of particulate matter control equipment." This section should contain additional criteria to indicate how compliance, for this exception, will be determined. An example of such criteria might be, the source must show compliance with the applicable opacity standard on three different days using Method 9 and must perform 1 stack test to show compliance with the applicable mass emission standards.*

Response B: The OAQ generally concurs and has revised the language to read: "The source is able to demonstrate compliance with the applicable particulate matter and opacity standards without utilization of particulate matter control equipment. Such demonstration may include, but not be limited to, Method 9 readings, stack test data, AP-42 calculations, or other data as approved by the Director."

II. Commenter: American Electric Power (AEP)

Comment A: *§45-2A-5.1.a: One issue that AEP consistently pointed out during the stakeholder processes (both for the legislative and interpretive rulemakings) and one that AEP still feels is appropriate to comment on is what appears to be an apparent melding of the terms “testing” and “monitoring.” In this particular section, the paragraph starts out by stating the requirement to conduct tests for the purpose of determining compliance. However, later in the paragraph, sources are directed to include a schedule for conducting tests in their monitoring plans. As a result “testing” and “monitoring” requirements are being blended. We believe the agency should make an effort to clarify that while sources are generally required to perform periodic testing to demonstrate compliance, monitoring is a separate requirement, and should be performed on a more frequent basis. AEP suggests that OAQ define the two terms (“testing” and “monitoring”) in the definitions section of the interpretive rule. When rules such as 45CSR2 and 45CSR10 were originally drafted, there was not an intention of requiring sources to continuously demonstrate compliance. However, with the melding of the requirements to periodically demonstrate (test) compliance and continuously monitor, sources are effectively being required to demonstrate compliance continuously. The standard was simply not set with this type of requirement in mind.*

Response A: The commenter states that the terms “testing” and “monitoring” have been blended or melded in the rule, and that this blending of terms somehow results in a requirement that sources demonstrate compliance with the standards on a continuous basis. While it is true that the two terms do sometimes overlap, this usage of terms does not result in any requirement to monitor continuously, as the commenter suggests. Rather, any requirement in the rule to monitor emissions continuously is not a result of semantics but a considered determination that the continuous monitoring method is the most appropriate method for measuring compliance, considering the nature of the source and other factors (see response to Comment C below for further discussion of this issue).

Indeed, the very example cited by the commenter, while illustrative of the blending of the terms “testing” and “monitoring”, does not support the conclusion that the rule requires compliance to be demonstrated continuously. Subdivision 5.1.a, found under section 5 entitled “Testing Requirements”, states that Method 9 visible emission testing is to be conducted on a periodic basis and that the frequency of this testing is to be included in the source’s monitoring plan. While the OAQ agrees this language is a perfect example of how the terms “testing” and “monitoring” can overlap, it by no means follows that the language requires compliance to be determined on a continuous basis.

It may be helpful to consider the standard dictionary definitions of the terms “testing” and “monitoring”:

“Monitoring,” according to The American Heritage Dictionary, means “to scrutinize or check systematically with a view to collecting certain specified categories of data”.

“Testing,” according to The American Heritage Dictionary, means “to determine the presence or properties of a substance”.

It is readily apparent from the above definitions that the real distinction between the terms has to do with frequency, just as the commenter suggested. The two terms are not mutually exclusive. Both terms involve the measurement and collection of data; however, “testing” can consist of a one-time measurement, whereas “monitoring” involves the measurement of data over some period of time or in some systematic fashion. Using the example suggested by the commenter, a Method 9 visible emission test, although a discrete test, takes on the character of monitoring when required to be conducted on some periodic basis.

Thus, the reality is that the two terms do blend into one another, depending upon the context. This blending of terms is not unique to the interpretive rules. The underlying legislative rules, 45CSR2 and 45CSR10, (which were the product of an extensive stakeholder process), use the terms “testing” and “monitoring” in the same manner as under these interpretive rules. (See 45CSR§2-8.1.a for example). Perhaps with the passage of the 2000 revisions to the legislative rules, these terms are receiving more scrutiny, since for the first time sources are required to develop and execute monitoring plans and conduct periodic testing, thus raising the issue of where “testing” ends and “monitoring” begins.

Regardless of what term one uses to describe the method of measuring data, the real question is what is the most appropriate method, considering the nature of the particular source. This turns on many different issues, all of which were thoroughly discussed in the stakeholder process, and includes reliability and representativeness of the method, physical constraints, and economic feasibility, to name but a few (this issue is addressed in detail in the response to Comment C below).

The OAQ believes there is no inherent problem in the way the terms are used in the legislative and interpretive rules. What is important is that there be no confusion as to the exact methods of measurement required by the Director, whether characterized as “monitoring” or “testing.” The rules must clearly inform the regulated public as to their obligation to collect information related to the demonstration of compliance with the standards.

Comment B: §45-2A-5.2.a: *For convenience, AEP suggests OAQ consider placing a table (similar to the table in §45-10A-5.1.a) in this section that describes the testing*

cycle. This could be as simple as incorporating the tables from Appendix A into this section.

Response B: The OAQ concurs that placing a table in this section would be more convenient and has made the revision.

Comment C: §45-2A-6.2.a: *One issue that AEP consistently addressed during the interpretive rulemaking stakeholder process and still feels is appropriate to comment on is the OAQ's decision to force sources with a design heat input greater than 250 mmBTU/hr to use COMS as the approved monitoring plan method. §45-2-3.2 and §45-2-8.2.a of the legislative rule clearly give fuel burning sources the choice of using Method 9 or COMS not only as the method for determining compliance, but also for monitoring emissions. AEP believes that in requiring specific sources to use a "continuous" method of "monitoring" compliance, the OAQ is effectively increasing the stringency of this standard. One issue that makes the proposed language particularly troublesome is the apparent melding of the terms "testing" and "monitoring" (see comment for §45-2A-5.1.a). By requiring the use of COMS, combined with the blending of "testing" and "monitoring" terms, the OAQ is effectively creating a requirement for larger fuel burning sources to continuously demonstrate compliance. AEP believes that a more appropriate requirement would be to use COMS as an indicator of compliance and that the approved USEPA approved Test Method 9 be used for periodic demonstrations of compliance. AEP further believes that when the 10% standard was originally established, compliance with that standard was clearly intended to be determined using a test method (Method 9) that is performed periodically, not continuously.*

Response C: The commenter states that 45CSR2, the underlying legislative rule, in both subsection 3.2 and in subdivision 8.2.a, clearly gives sources the choice between Method 9 and COMS to demonstrate compliance with the opacity standard of 10%, and implies that this choice is completely up to the source to make, without any direction or input from the regulatory agency. This is not what the rule says. The commenter fails to consider other pertinent language in subsection 3.2 which clearly gives the Director the authority to require a source to use COMS as the method of demonstrating compliance. Subsection 3.2 states:

3.2 Compliance with the visible emission requirements of subsection 3.1 shall be determined in accordance with 40 CFR Part 60, Appendix A, Method 9 or by using measurements from continuous opacity monitoring systems approved by the Director. The Director may require the installation, calibration, maintenance and operation of continuous opacity monitoring systems and may establish policies for the evaluation of continuous opacity monitoring results and the determination of compliance with the visible emission requirements of subsection 3.1. Continuous opacity monitors shall not be required on fuel burning units which employ

wet scrubbing systems for emission control. (Emphasis added)

The authority to require COMS is by no means a new regulatory requirement. The above-quoted language, authorizing the Director to require COMS, has been in 45CSR2 since 1995. Furthermore, revisions to the legislative rule in 2000 specifically authorized COMS in the context of both periodic testing and monitoring (See subdivisions 8.1.a and 8.2.a of 45CSR2), thereby strengthening the rule even further regarding COMS.¹ The Director by the adoption of this interpretive rule is simply providing guidance for the first time as to when and under what circumstances he or she will require COMS to be used, an exercise of the authority clearly given him by law.

The commenter's second point is that by requiring some sources to use a continuous method of monitoring, such as COMS, OAQ is effectively increasing the stringency of the standard. OAQ disagrees that the interpretive rule in any way alters the underlying standard. The standard established by 45CSR§2-3.1 is an opacity standard of 10%, based on a six-minute block average. Regardless of what type of monitoring is used to determine compliance with the standard, be it periodic Method 9 testing, COMS or some other type of method, the underlying standard and the obligation to comply remain the same.

The scope of the compliance obligation with requirements under the federal Clean Air Act (CAA) was one of the key points discussed by EPA in its final rulemaking involving the Any Credible Evidence (ACE) concept. (See 62 Federal Register 8323-8326, February 24, 1997). One of industry's main contentions regarding EPA's proposed ACE rule was that the effect of the rule, allowing data and evidence in addition to reference test methods to be considered in an enforcement action, was to increase the stringency of the standard. EPA responded by explaining that the issue of what type of data is used to determine compliance is distinct from the issue of the source's underlying obligation to comply. The obligation to comply with the agency's standards is continuing in nature, i.e., sources are required to comply all of the time (consistent with averaging times) except for periods specifically exempted in the standards, such as start-up, shutdown or malfunctions. In the final promulgation of the ACE rule, EPA cited ample legal authority under the CAA, regulations and case law for the proposition that sources are required to comply continuously. The Director believes the same legal principles apply in this case since 45CSR2 is part of the State Implementation Plan (SIP) required under the CAA.

The scope of the compliance obligation is further elucidated in OAQ's Title V

¹The Director's general authority to prescribe a specific monitoring device is found under W.Va. Code §22-5-4(a)(15).

compliance certification requirement under 45CSR30. In the compliance certification form required to be signed by sources annually, sources are required to certify “continuous compliance” with the permit, whether the monitoring methods specified in the permit generate data on an intermittent basis, such as periodic Method 9 readings, or on a continuous basis, such as COMS.²

The fact that the compliance obligation is continuous in nature does not, however, preclude the agency from adopting enforcement discretion policies for evaluating the results of various test methods. Indeed, 45CSR§2-3.2 expressly authorizes the Director to establish policies for the evaluation of COMS results, and the OAQ adopted such a policy on February 28, 1997. Such enforcement policies, though, are separate and distinct from the issue of whether COMS are warranted and are therefore outside the scope of this rulemaking.

The commenter further suggests that COMS be used only as an indicator of compliance and that periodic Method 9 testing be considered the definitive demonstration method for the opacity standard in 45CSR2. The legislative rule, however, makes no such distinction. It says that both methods may be used to demonstrate compliance. Both methods are presumably reliable as direct measurements of compliance as opposed to merely indicators of compliance. However, as is explained in more detail below, COMS may be the preferred method in certain situations, and the Legislature has clearly authorized the Director to require COMS in those instances.

Furthermore, Method 9 testing has some significant limitations as a monitoring method when compared to COMS, which is certainly relevant to the Director’s determination whether to require COMS to be used in certain instances. These limitations are well-recognized and include weather conditions, darkness/lighting conditions, geography (background, accessibility), interference, number of emission points, and availability of a certified Method 9 observer. Because of these physical constraints, Method 9 tests cannot be conducted during significant periods of time, making them less reliable and less capable of producing representative measurements than COMS.

The commenter’s last point was that when the 10% opacity standard was originally adopted, the method intended to be used for determining compliance was Method 9 testing, implying that the agency is now and forever bound to only that type of monitoring requirement. First, the commenter’s premise that Method

²The compliance certification form explains in a footnote that a source may claim continuous compliance based upon the results of intermittent compliance determination methods, provided that the results are representative and no reasonably available information contradicts that assumption (the ACE concept).

9 was the compliance determination method in the original rule is incorrect. Method 9 was not expressly mentioned in the rule until 1995. When the 10% opacity standard was first adopted in 1974, the rule used the Ringelmann Smoke Chart as the compliance test, and the definition of “Ringelmann Smoke Chart” included not only the Ringelmann’s Scale published by the U.S. Bureau of Mines but also “any chart, recorder, indicator, or device which is a standardized method for the measurement of smoke density which is approved by the Commission as the equivalent of said Ringelmann’s Scale.” (Emphasis added). Thus, even in 1974, the rule contemplated that other monitoring devices, including COMS, might be utilized to demonstrate compliance with the standard.

Even if it were true, however, that Method 9 was the only method contemplated in the original rule, it would not follow that the OAQ cannot today require sources to use new and improved monitoring methods.

COMS are in fact well-established monitoring methods which accurately measure emissions. They have been the required monitoring method in some air programs for 30 years. In 1971, EPA first required steam generating units with a design heat input of 250 mmBTU/hr or greater to use COMS as part of the new source performance standards (NSPS). See 40 CFR Part 60, Subpart D. Over the years, EPA has continued to require more and more source categories to use COMS (see below for more detail). Indeed, testing and monitoring methods are updated frequently by EPA with improvements in the accuracy of the methods. One of the paramount reasons for the OAQ’s major regulatory revision effort initiated in 1998 was to include updated test methods in all of its rules, especially the SIP rules. There simply is no valid reason that sources, especially those greater than the 250 mmBTU/hr threshold, should not be required to use modern technology for measuring their emissions.

Before providing all the reasons supporting the COMS requirement in the interpretive rule, let us examine exactly what the rule says. The rule says that fuel burning units with a design heat input of 250 mmBTU/hr or greater must use COMS to measure opacity, with two significant exceptions. One exception is if the source’s emissions are so low it does not need control equipment; the other exception is if a COMS will not accurately measure emissions or the source cannot install COMS due to physical constraints or extreme economic reasons. Both of these exemptions were suggested by the stakeholders in the drafting of the rule and permit the Director substantial flexibility to evaluate individual situations on their own merits.

There are many reasons supporting the requirement that certain sources use COMS to demonstrate compliance with the opacity standard. The first is that sources regulated under the interpretive rule burn fuels that produce large quantities of ash (particulate matter) and those units meeting or exceeding the 250

mmBTU/hr threshold have a significant potential to adversely affect the environment, thus warranting the use of the most reliable means of measuring those emissions.

Second, the 250 mmBTU/hr threshold is a common regulatory threshold for requiring COMS to be used as the monitoring method. The federal NSPS and Acid Rain programs both require sources of this size to use COMS, and in fact approximately twenty (20) sources in West Virginia currently have COMS for that reason. Although the NSPS and Acid Rain programs regulate the same types of sources, they are based on different principles than 45CSR2. 45CSR2 is a SIP rule designed to facilitate attainment and maintenance of the National Ambient Air Quality Standard for particulate matter. Significantly, the standards under 45CSR2, both opacity and mass-based, are generally more stringent than the standards under NSPS, and it would seem reasonable to require sources subject to 45CSR2 to use methods of measuring emissions which are at least equivalent to the methods required under NSPS and the Acid Rain program.

Third, it is reasonable to require large sources to use a monitoring method that is well-established and generally capable of producing the most reliable, representative emission results. It is commonly accepted that COMS create an unbiased, continuous, and permanent record of opacity. (See EPA's Region 7 Policy on Periodic Monitoring for Opacity, dated April 18, 1997). Furthermore, COMS are particularly appropriate for this type of source. Large coal-fired boilers have control devices with many operating variables, any one of which may affect the device's ability to control emissions efficiently and therefore the resulting opacity. COMS, being a direct measurement of opacity, serves as a direct measurement of compliance with the standards.

Fourth, COMS are both economically and technologically feasible. EPA has been required to verify this point in a myriad of rulemakings under NSPS, including industrial, institutional, commercial, and utility steam boilers firing other than "clean" fuels. As stated above, EPA first required COMS for steam generators in 1971 for units with a design heat input of 250 mmBTU/hr and greater. Over the last 30 years, EPA has gradually required smaller steam boilers to use COMS, resulting in boilers as small as 30 mmBTU/hr now being required to use COMS under NSPS. Some of the many other source categories currently required to use COMS under NSPS are primary metal smelters, ferroalloy and steel arc furnaces, pulp mill recovery furnaces, glass melting furnaces, rotary lime kilns, and phosphate rock and other mineral dryers, calciners, and grinders. The number of source categories required to use COMS under the NSPS standards illustrates that COMS are a proven type of monitoring technology.

Additionally, one of the strongest justifications for the COMS requirement in this interpretive rule is that almost all of the sources required to use COMS by this

rule already have COMS in place due to other regulatory programs or enforcement actions taken by the Director, meaning there will be little economic impact to the regulated community as a result of this requirement. Balancing this relatively small economic impact against the substantial benefits to be obtained by sources using the most reliable methods of measuring emissions clearly justifies the Director in adopting this requirement.

Lastly, although not a sufficient reason in itself, requiring large sources to use COMS to measure opacity will only enhance the agency's future efforts to control fine particulate matter and regional haze, a regulatory initiative expected in the not-too-distant future.

Comment D: *§45-2A-6.3.a.7.A: AEP suggests OAQ reconsider the number of Method 9 readings that must be taken each hour during an excursion period under a non-COMS based monitoring plan. A properly completed 6-minute US EPA Method 9 test is sufficient to determine whether or not a source is back in compliance with the standard. Conducting 3 additional tests will provide little, if any, additional value. It would seem more appropriate to only require 1 properly conducted Method 9 test each hour. The 1 test-per-hour policy could potentially have a positive impact on the environment by freeing up an employee to troubleshoot the cause of the exceedance and correct any problems discovered.*

Response D: Upon review of the language and consideration of the commenter's point regarding availability and effective use of personnel resources, the language in subparagraph 6.3.a.7.A has been changed to "for excursions of any operating parameter exceeding one hour, the owner or operator shall perform Method 9 readings for a minimum of six (6) minutes for each hour during the excursion. Such Method 9 readings shall continue each hour until four (4) successive six-minute observations demonstrate compliance."

Comment E: *§45-2A-7.2.a: Consistent with a similar requirement under §45-2-7.2.b.3.E, AEP believes that even when a mass emissions test has not been completed during a particular quarter, the source should still submit a report to the OAQ stating that no mass emission tests were conducted during that period.*

Response E: The OAQ does not believe this revision is necessary. The reporting requirements governing testing for compliance with mass emissions are located in the Appendix to 45CSR2, and we believe they are sufficient to address the issue.

Comment F: AEP commented generally that in some cases the interpretive rule expanded the authority of the agency and did more than merely clarify the legislative rules.

Response F: See Response to Chamber's and WVMA's Comment A below.

III. Commenter: PPG Industries, Inc. (PPG)

Comment A: §45-2A-4. *Registration of Allowable Emission Rates for Individual Stacks.*
This Section provides the owner or operator with a choice between conducting simultaneous weight emission tests of all similar fuel burning units at a source or registering an allowable emission rate for each individual stack at the source.

First, an interpretive rule should not require the registration of an allowable emission limit for each stack. Such a requirement effectively increases the stringency of the underlying particulate matter limit established in 45CSR2 (which allows for a plant-wide limit). As discussed above, an interpretive rule cannot create new obligations or increase the stringency of existing legislative rules.

Second, the option of conducting stack testing on all stacks in order to demonstrate compliance with the applicable particulate matter limit in 45CSR2 appears reasonable provided the testing requirements are reasonable. PPG is concerned with the availability and allocation of resources (i.e., stack testing consultants and/or equipment to conduct such testing "simultaneously" as indicated in the interpretive rule. PPG requests that the DEP allow for such stack testing over a reasonable period of time such that testing of all at a source can be accomplished in a reasonable manner.

Response A: The commenter's contention that the interpretive rule creates a new standard is unsupported. 45CSR§2-4.1 provides a plant-wide limit for particulate matter; however, 45CSR2 also provides in subsection 4.2 that:

"4.2. Subject to the provisions of this rule, allowable emission rates for individual stacks shall be determined by the owner and/or operator and registered with the Director at the request of, and on forms provided by, the Director. Such rates shall be subject to review and approval by the Director.

4.2.a. The approved set of individual stack allowable emission rates shall become an official part of the compliance schedule and/or any permits concerning such source(s), and shall not be changed without the prior written approval of the Director."
(Emphasis added)

The plant-wide limit in subsection 4.1 allows sources with multiple stacks the flexibility to run different units at different operating scenarios as long as the sum of emissions from the stacks does not exceed the plant-wide limit. The interpretive rule does not change this limit; it merely makes the limit enforceable

by specifying how a source must demonstrate compliance. The only way that compliance with the plant-wide limit can be established with any reasonable degree of certainty is in one of two ways: (1) stack testing to be conducted at all of the stacks simultaneously; or (2) registering individual emission rates at each stack, which rates when added together, do not exceed the plant-wide limit.

OAQ believes an interpretive rule is an appropriate vehicle for requiring sources to register their preference for simultaneous stack testing or registering of individual stack limits. The interpretive rule provides operating flexibility to sources by providing them this option.

Regarding the simultaneous testing option, the commenter stated that it is a reasonable option for determining compliance with the limit, but was concerned that the resources may not be available to conduct such testing in a truly synchronized manner. In considering this point, the OAQ revisited 45CSR2 in its entirety and has concluded that the term “simultaneous” may be defined as completing all stack testing within a seven-day period.

Subdivision 4.1.b of the Appendix to 45CSR2 states: “The result of each compliance test is to be the arithmetic average of three (3) complete sampling runs conducted within a seven (7) day period.”

Subsection 5.1 of the Appendix further states: “All compliance test runs, which are to be included in the test result for a unit or a specified number of units, shall be conducted while the unit or group of units is operated at or above the normal maximum operating load for the specified unit or group of units; while fuel or combinations of fuel representative of normal operation are being burned; and under such other relevant conditions as the Director may specify based on representative performance of the specified units.”

After consideration of the above-quoted language from the Appendix, OAQ has decided to add the following definition of “simultaneous” to the interpretive rule:

“ ‘Simultaneous’ means that all compliance test runs for all similar fuel burning units at the plant are conducted within a seven (7) day period.”

This revision should provide sources some latitude in making arrangements for simultaneous stack testing, making it a more viable option, along with the individual stack registration option. Either one will be considered an acceptable means of demonstrating compliance with the plant-wide standard in subsection 4.1 of 45CSR2.

Comment B: *§45-2A-6 Visible Emission Monitoring Plan requirements.*

First, PPG notes that the time frame for submitting a monitoring plan is not included in the interpretive rule. Legislative rule 2 requires submission of a monitoring plan within 6 months of its effective date of August 31, 2000 (i.e., February 28, 2001). PPG requests that the DEP confirm the date for submitting monitoring plans and consider clarifying the due date in interpretive rule 2A.

Second, subsection 6.2 generally requires a continuous opacity monitoring system ("COMS") for certain larger fuel burning units. PPG initially notes that legislative rule 2 does not mandate COMS but allows for alternative monitoring (e.g., periodic Method 9 observations or parametric monitoring). The DEP should not restrict a facility's options via an interpretive rule. Instead, DEP should consider emission sources on an individual basis in assessing whether a COMS will be required.

However, PPG does note that section 6.2.b provides for an exemption from the COMS requirements under certain conditions. PPG believes that the inclusion of this provision may provide sufficient flexibility to address situations on a case-by-case basis provided the DEP is reasonable in assessing individual situations. Accordingly, PPG supports the DEP's recognition of the ability to exempt sources from the COMS requirement. PPG intends to further explore alternate monitoring for opacity, particularly in light of the impact of the recognized error in COMS data.

Response B: The initial time frame, as well as other implementation measures, have been incorporated into the interpretive rule in section 6. Also, a time frame for the installation of COMS was included in subdivision 6.2.c of the rule, consistent with the understanding of the stakeholders group. OAQ had intended to include this language in the proposed rule as it did for the installation of CEMs in 45CSR10A. OAQ believes that such clarification is desirable in the interpretive rule. Regarding the COMS requirement for large sources, see Response to AEP's Comment C.

Comment C: PPG commented generally that several portions of the proposed interpretive rule created new obligations or increased the stringency of the legislative rule.

Response C: See Response to Chamber's and WVMA's Comment A below.

IV. Commenter: West Virginia Chamber of Commerce (Chamber) and West Virginia Manufacturers Association (WVMA)

Comment A: *Interpretive Rule Format.* The Chamber and WVMA question the agency's use of the interpretive rule format to address substantive regulatory revisions. The organizations do, however, support the use of interpretive rules to establish

clarification and guidance for the underlying legislative rule and statutory law. An interpretive rule is defined as a rule that will provide information or guidance to the public regarding the agency's interpretations, policy or opinions upon the law enforced or administered by it. In some provisions of these interpretive rules, the agency is providing more than simply guidance. It is changing the underlying rule applicability. A case in point is the agency's requirement that continuous monitors be required of certain classes of facilities, where the underlying legislative rules clearly provide a range of monitoring options. A second case is the agency's requirement that sources register individual stack emission limits. This represents a departure from historical implementation of 45CSR2 and 45CSR10 and contradicts the overall cap on emissions that is provided under 45CSR2.

The types of changes that are suggested within 45CSR2A and 45CSR10A are of general application and future effect with enforcement implications which warrant the more thorough rulemaking process of a legislative rule.

Response A: The two examples cited by the commenter have been thoroughly discussed in other sections of this response. It is abundantly clear that the interpretive rule does not in any way change the underlying rule or statute nor does it expand the agency's jurisdiction in an impermissible manner. Rather, it interprets and implements the statute and 45CSR2 by explaining how the Director intends to make the discretionary judgments permitted him by law.

The OAQ is somewhat disappointed that the commenter questions the use of an interpretive rule as the mechanism for specifying what type of monitoring is acceptable and when individual stack registration is required. During the development of the underlying legislative rule, the stakeholders envisioned using an interpretive rule as the mechanism for the detailed implementation of the rule with regard to testing, monitoring, recordkeeping and reporting issues. Indeed, the legislative rule, although quite prescriptive with respect to the standards themselves, leaves the details of testing, monitoring, recordkeeping and reporting largely to the Director's discretion. It is inevitable in such a case that additional guidance is necessary explaining how the agency intends to make various discretionary judgments. The alternative to establishing this guidance is that all decisions are made strictly on a case-by-case basis, with no "bright lines" or guiding principles. This is not only unduly resource intensive for the agency; it encourages decision making which has the potential to treat sources in a dissimilar fashion, although similar in nature.

When an agency desires to provide information and guidance to the public upon the law enforced by it, an interpretive rule is the mechanism set forth in the West Virginia Administrative Procedures Act. W.Va. Code §29A-1-2(c). An interpretive rule applies generally and with future effect (like any other rule), and

is a means to provide details regarding the implementation of the law. It is also an appropriate way to establish the conditions for the exercise of discretionary power provided in the underlying law. The definition of “interpretive rule” states in pertinent part:

. . .Where any provision of this code lawfully commits any decision or determination of fact or judgment to the sole discretion of any agency or any executive officer or employee, the conditions for the exercise of that discretion, to the extent that such conditions are not prescribed by statute or by legislative rule, may be established by an interpretive rule and such rule is admissible in any administrative or judicial proceeding to prove such conditions. W.Va. Code §29A-1-2(c).

The two examples given by the commenter concern portions of the legislative rule which commit a determination of fact and judgment to the sole discretion of the Director, thus making them perfect candidates for interpretive rulemaking. The first concerns sections 3.2, 8.1.a and 8.2.a of 45CSR2, all of which commit the determination of whether to require COMS to the Director’s sole discretion. The second concerns section 4.2 of 45CSR2, which states that the Director may require a source to register individual stacks. Both of these provisions, COMS and individual stack registration, are examples of discretionary authority provided by law.

Except for being approved by the Legislature, the process for adopting an interpretive rule is virtually the same as for a legislative rule. The rule is proposed for public comment and the agency is required to consider all comments and provide a written response to those comments. In this case, there was additional public participation in the development of the proposed rule through an extensive stakeholder process, inclusive of all interest groups. As a result of this process, OAQ has considered a variety of different testing and monitoring options and has written a rule which affords a significant amount of flexibility both to the Director and to the sources, as is evidenced by several exceptions and exemptions contained in the interpretive rule.

Clearly, state law authorizes an agency to use an interpretive rule as OAQ has done in this case. The benefits of an agency providing guidance to the public through the interpretive rulemaking process cannot be overstated. In this instance, the rule provides reasonable assurance to everyone that they will know the relevant and important factors considered by the Director when he or she makes a decision regarding testing and monitoring requirements.

Comment B: *Registration of Individual Stacks.*

45CSR2A and 45CSR10A. The Office of Air Quality itself admits that the

historical application of the requirement to register individual stacks has been confusing. Those who have had experience with 45CSR2 and 45CSR10 recall that the context within which stacks were required to assign specific weight rates involved instances where modeling was required to demonstrate air quality impacts. The agency is now proposing that all regulated source stacks be registered for specific emission rates. Such a registration requirement is in direct conflict with the provisions of 45CSR2 and 10 which provide for a plant-wide cap for the weight emission standards. By requiring registration of individual stacks, the interpretive rule is improperly limiting the underlying statutory rule language. A move from a plant wide limit to a stack-by-stack limit effectively increases the stringency of these standards. This increase in stringency is being imposed when there is no evidence that there are problems meeting the current PM or SO₂ NAAQS.

The agency explained its interest in emphasizing the registration as a need to prepare facilities for implementation of the Title V program.

The industry representatives, working with the agency, proposed that a more reasonable application of the requirements to register individual stacks under both 45CSR2A and 45CSR10A as follows:

The owner or operator of each Title V fuel burning unit(s) shall register the allowable emission rate for each individual stack. The emission rate, in pounds per hour, shall be determined as provided in Appendix E. Registration of design heat input shall not become an enforceable limit. Registration of an allowable emission rate shall be reviewed by the Director and if approved as part of a compliance schedule and/or permit limit shall become enforceable. Individual stack emission limits shall be representative of varied operating conditions and are not required to represent a single operating scenario of plant-wide emissions.

This proposal was rejected based upon additional concerns of the agency concerning enforcement of 45CSR2 and 45CSR10. Industry continues to question how registration of individual stacks creates an enforcement tool the agency does not already possess. In light of the fact that the agency's proposal directly contradicts the plant-wide limits for particulates and raises a serious concern about enforcement, we object to the requirement to register each stack under 45CSR2A and 45CSR10A.

Response B: See Response to PPG Comment A.

Additionally, OAQ disagrees with the commenter that the registration requirement was used in the past primarily in instances where modeling was required to demonstrate air quality impacts. The few times individual stack registration was required in the past occurred when the agency was concerned that the plant-wide

limit was not being met at facilities with multiple stacks or could not be practically demonstrated to be met. It was not routinely required because it was assumed that most sources were operating each of their individual stacks at the “presumptive” limit, i.e., a prorated amount of the plant-wide limit. As a result of further consideration and discussions in the stakeholders group, the OAQ now realizes that sources may not desire to use this “presumptive” approach and that there is a need to exercise the individual stack registration option authorized by the legislative rule.

With the advent of the regulatory revision effort in 1998, 45CSR2 was carefully scrutinized from the standpoint of compliance demonstrations, among other things. As the commenter correctly suggested, OAQ’s sensitivity to the issue of compliance demonstrations has been heightened by the Title V operating permit program, as has the entire public’s. It is important that there be a credible means of demonstrating compliance with all the standards in the legislative rule, including the plant-wide weight emission standards in subsection 4.1 of 45CSR2.

The commenter states that industry proposed language on the registration option during the stakeholder discussions and that the OAQ rejected that proposal. However, the language presented during these discussions contained two sentences in addition to the language quoted by the commenter. These two additional sentences read: “Total registered emissions from individual units may exceed the plant-wide limits of 45 CSR 2 (or 10). Total actual emissions may not exceed specified limits of 45 CSR 2 (or 10).”

It was these two sentences that were the reason the OAQ could not accept industry’s proposal. The first sentence states that the registered emissions can exceed the plant-wide limit, which completely undercuts the registration process as a means of ensuring compliance with the plant-wide limit. The whole purpose of registering is to provide some operating flexibility while establishing a credible standard by which to measure the compliance of the source while operating. Furthermore, the second sentence is not needed because it merely states the expectation of the rule.

The concepts in the remaining part of industry’s proposal (quoted in the Comment above) are not objectionable to the OAQ and are similar to the concepts and language in the interpretive rule. The reference to Title V sources is agreeable, but unnecessary, since all the sources covered by this rule are in fact Title V sources. The next point regarding design heat input is a point upon which industry and OAQ agree—design heat input has never been considered a limit. The only limit is the particulate emission rate which is calculated as a product of the design heat input and the appropriate regulatory factor stated in 45CSR2, section 4. It is unnecessary to make this statement in the rule. The last concept involves multiple operating scenarios and whether a source is allowed to register more than

one scenario. OAQ believes the language in the rule would permit a source to register more than one operating scenario, provided that each operating scenario is identified by its operational parameters so that it is clear at any given time which scenario is in effect, and further provided that the source conducts rule-prescribed tests to determine compliance under each scenario.

Comment C: *Testing Requirements. 45CSR2A. The weight emission testing requirements under 45CSR2A, §5.2 reference Appendix A for establishing the frequency of testing. Appendix A refers to cycles which are defined in the definitions section. To reduce confusion, it is suggested that the definitions for each cycle be included in Appendix A or in the text of §5.2. In 45CSR10A §5.1.a the definitions for frequency are included in the discussion. Sources working with both 10A and 2A may have a clearer understanding of these frequency requirements if they were handled in a similar fashion.*

Response C: See Response to AEP Comment B.

Comment D: *Monitoring Plan Requirements. When we initially discussed the agency developing a policy to assist in the implementation of 45CSR2 and 45CSR10 it was to establish the details as to what needs to be incorporated into the monitoring plans and related recordkeeping requirements. This section is an important part of what is needed to assure the regulated community is providing appropriate information.*

45CSR2A. The Chamber and WVMA agree with the agency's position that operation of COMS is an adequate monitoring plan. Also of importance is the provision that allows those sources that are able to comply with the applicable particulate matter and opacity standards without utilization of particulate matter control equipment not to file a plan.

The Chamber and WVMA are also supportive of the 45CSR2A, §6.2.b which allows an exemption from the installation of COMS if the Director determines that COMS would not provide an accurate determination of emissions or that the installation of a COMS may be waived due to physical source limitations or to extreme economic reasons. This provision is similar to one in the Commonwealth of Pennsylvania. The Chamber and WVMA know of members who will be petitioning the Director to approve such exemptions we hope that the agency will give those petitions appropriate consideration.

Finally, the Chamber and WVMA find inclusion of non-COMS based monitoring plans as entirely consistent with 45CSR2. Not all sources should be required to install COMS, and Method 9 readings can readily and economically provide compliance data.

Response D: No response needed.

Comment E: *Recordkeeping and Reporting Requirements. 45CSR2A. The Chamber and WVMA support 45CSR2A, §7.1.a.1 which establishes appropriate recordkeeping requirements for the burning of pipeline quality gas. We are also supportive of the agency's inclusion of provisions that address alternative fuels and combinations of fuels burned.*

Generally, the provisions of 45CSR2A, §7.2 appropriately set forth the details of what the agency needs with respect to exception reports. The percentages for the excursions relative to total operating time appear to be inconsistent with those recognized in 45CSR10A, § 7.2. It is proposed that these requirements be made consistent with those of 45CSR10A.

Response E: No response is needed to the first comment.

Regarding the second comment, the percentages in 45CSR2A and 10A are intentionally different. OAQ believes that a total duration of excursions of 1% or less of total source operating time warrants the less detailed reporting that the Summary Report form provides. Section 3.8 of 45CSR10 allows exception periods which total approximately 3% of each month. 45CSR2, while providing exemptions for start-up, shutdown and malfunctions, does not specify any duration for these events. Therefore, the OAQ believes that for 45CSR10A, a total duration of excursions of 4% or less of total source operating time warrants less detailed reporting, whereas for 45CSR2A, 1% is the appropriate level.