

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

WV Division of Environmental Protection  
AGENCY: Office of Air Quality TITLE NUMBER: 45CSR5

CITE AUTHORITY WV Code §§22-5-1 et. seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

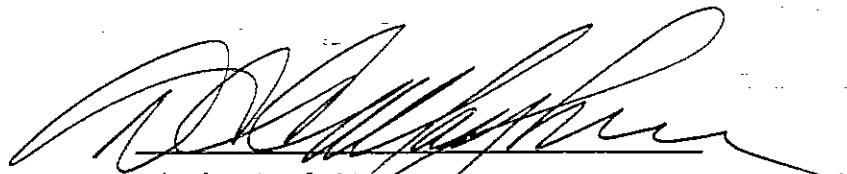
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR5

TITLE OF RULE BEING AMENDED: To Prevent and Control Air Pollution from  
the Operation of Coal Preparation Plants and Coal Handling Operations

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE  
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT  
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE  
FILED WITH THE SECRETARY OF STATE.



Authorized Signature

David C. Callaghan  
Director, DEP

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TO PREVENT AND CONTROL AIR POLLUTION FROM THE  
OPERATION OF COAL PREPARATION PLANTS AND  
COAL HANDLING OPERATIONS

Consultation with the Environmental Protection Advisory Council

West Virginia Code Section §22-1-3(c) requires, in part, the Director of the Division of Environmental Protection to consult with the Environmental Protection Advisory Council prior to proposing any new rule. This rule was filed prior to the appointment of the Environmental Protection Advisory Council, therefore, no consultation with the Environmental Protection Advisory Council has been possible.

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TO PREVENT AND CONTROL AIR POLLUTION  
FROM THE OPERATION OF COAL PREPARATION PLANTS  
AND COAL HANDLING OPERATIONS

Determination of Stringency

W. Va. Code §22-1-3 in conjunction with W. Va. Code §22-1-3a requires, in part, the Director of the Division of Environmental Protection, to determine if a new or amended environmental provision should be the same in substance as a counterpart federal regulation. If the new rule should be the same in substance, as the counterpart federal regulation, then the Director shall incorporate by reference, to the greatest extent possible, the federal counterpart rule. If the Director determines the rule should not be the same in substance as the federal counterpart rule, then the Director shall file a statement setting forth the difference between the proposed rule and the counterpart federal regulation. W. Va. Code §22-1-3a requires the Director to conduct the "stringency" determination and provide specific reasons for deviation of the proposed state rule from the federal counterpart regulation.

This rule was developed as a part of the State's Implementation Plan (SIP) pursuant to the federal Clean Air Act, as amended. The Implementation Plan has as its purpose the attainment and maintenance of attainment with the National Ambient Air Quality Standards.

This rule has been determined to incorporate necessary provisions for the attainment of the National Ambient Air Quality Standards, but has no federal counterpart, therefore no stringency determination is required.

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TO PREVENT AND CONTROL AIR POLLUTION  
FROM THE OPERATION OF COAL PREPARATION PLANTS  
AND COAL HANDLING OPERATIONS

Private Real Property Protection Act Assessment

The Division of Environmental Protection is required to perform a "constitutional takings determination" or assessment in only limited circumstances (See "Private Real Property Protection Act", W. Va. Code §§22-1A-1 et seq.). Under W. Va. Code §22-1A-3(a), such an assessment is not required, unless the action being contemplated by the Division is reasonably likely to deprive a private real property owner of his or her property in fee simple or to deprive an owner of all productive use of his or her property.

W. Va. Code §22-1A-3(c) expressly exempts rulemaking which simply limits uses pursuant to statute from the assessment requirement. In pertinent part, Section 3(c) provides that the following actions do not require an assessment:

(1) Licensing or permitting conditions, requirements or limitations to the use of private real property pursuant to any applicable state or federal statutes, rules or regulations; or

(2) Rules and emergency rules of the division that are reasonably likely to limit the use of private real property pursuant to any applicable state or federal statutes, rules or regulations;

See W. Va. Code §22-1A-3(c) (1) and (2).

Therefore, since this is a rulemaking pursuant to statute, an assessment is not required.

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TITLE 45  
LEGISLATIVE RULES  
~~AIR POLLUTION CONTROL COMMISSION~~  
BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

SERIES 5  
TO PREVENT AND CONTROL AIR POLLUTION FROM  
THE OPERATION OF COAL PREPARATION PLANTS AND COAL  
HANDLING OPERATIONS

§45-5-1. General.

1.1. Scope. -- The purpose of Series 5 is to prevent and control air pollution from the operation of coal preparation plants and coal handling operations.

1.2. Authority. -- W. Va. Code ~~§16-20-5~~ §22-1-3, 22-5-4

1.3. Filing Date. -- ~~July-26, 1993~~

1.4. Effective Date. -- ~~October-22, 1993~~

1.5. Incorporation by Reference - Federal Counterpart Regulations - The Director has determined that there is no counterpart regulation.

§45-5-2. Definitions.

2.1. "Air Pollution," 'statutory air pollution' shall have the meaning ascribed to it in W. Va. Code ~~§16-20-1~~ §22-5-1 et seq., as amended.

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

2.3. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state and all agencies or divisions thereof, any state political subdivision, the United States of America, any municipal, statutory, public or private corporation or association organized or existing under the law of this or any other state or country, and any firm, partnership or association of whatever nature.

2.4. "Handling Operation" means and includes but shall not be limited to all coal grinding, crushing, picking, screening, conveying, storing, and stockpiling operations not associated with the transport, production, or preparation of coal or coal refuse, excluding coal washing, drying, or air separation operations at a coal preparation plant as defined in this rule and which are not also subject to the emission control requirements of 45CSR2, 45CSR3, or 45CSR7.

2.5. "Coal Preparation Plant" means and includes ~~but shall not be limited to all coal washing, drying or air separation operations used for the purpose of preparing the product for marketing any facility~~ (excluding underground mining operations) that prepares coal by one or more of the following processes: screening,

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breaking, crushing, wet or dry cleaning, and thermal drying, and further such definition of a coal preparation plant shall include all coal handling operations associated with the processes described above, but shall not include:

a. Any facility that is designed to process less than 200 tons of coal per day; or

b. Any facility or equipment subject to the requirements of 45CSR2, 45CSR3, 45CSR7; or

c. Any facility which would be defined as a coal preparation plant solely because it incorporates a stationary grizzly or scalping screen to separate oversized refuse from coal.

2.6. "Plant" means and includes all equipment and grounds utilized in an integral complex for coal preparation and associated handling.

2.7. "Fuel" means a fuel such as a solid, gaseous or liquid fuel which is fired in fuel burning equipment.

2.8. "Fuel Burning Equipment" means and includes any chamber, apparatus, device, mechanism, stack or structure used in the process of burning fuel for the primary purpose of producing heat for a thermal drier.

2.9. "Thermal Drier" means a device using fuel burning equipment for the primary purpose of reducing the moisture content of coal.

2.10. "Air Table" means a device using a gaseous separating media for the primary purpose of improving the product quality.

2.11. "Air Pollution Control Equipment" means any equipment used for collecting gasborne particulate matter for the purpose of preventing or reducing particulate emissions into the open air.

2.12. "Standard Cubic Foot" means one (1) cubic foot of dry gas, measured at standard conditions of sixty-eight degrees Fahrenheit (68°F) and 29.92 inches of mercury column.

2.13. "Stack" for the purpose of this rule means but shall not be limited to any duct, control equipment exhaust, or similar apparatus, which vents gases containing particulate matter into the open air from operations including, but not limited to, furnaces, drying chambers, and air separation (table) operations.

2.14. "Particulate Matter" means any material except uncombined water, that exists in a finely divided form as a liquid or solid.

2.15. "Ringelmann" shall be the Ringelmann's Scale for Grading the Density of Smoke published by the United States Bureau of Mines as information circular 7718, August, 1955, or any chart, recorder, indicator, device, or method which is

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a standardized method for the measurement of smoke density which is approved by the ~~Commission~~ Director as the equivalent of said Ringelmann Scale.

2.16. "Fugitive Dust" means any and all particulate matter generated, which, if not confined or suppressed by water or chemical treatment, would be emitted directly into the open air from points other than a stack outlet.

2.17. "Fugitive Dust Control System" means any equipment or method used to confine, collect, and dispose of fugitive dust, including but not limited to hoods, bins, duct work, fans, and air pollution control equipment and equipment used to prevent or minimize the emission of fugitive dust by water or chemical treatment.

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

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

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

~~2.21. "Chief of Air Quality" or "Chief" means the Chief of the Office of Air Quality or his or her designated representative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of W. Va. Code §22-1-1, et seq.~~

Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W. Va. Code ~~§16-20-1~~ §22-5-1 et seq., as amended.

**§45-5-3. Emission of Particulate Matter Prohibited and Standards of Measurement.**

3.1. No person shall cause, suffer, allow or permit emission of particulate matter into the open air from any stack which is as dark or darker in shade or appearance as that designated as No. 1 Ringelmann or twenty percent (20%) opacity, except as noted in Sub-section 3.2.

3.2. The provisions of Sub-section 3.1 of this section shall not apply to particulate matter, the shade or appearance of which is less than No. 3 Ringelmann or sixty percent (60%) opacity for a period or periods aggregating no more than five (5) minutes in any sixty (60) minute period during operation.

3.3. The provisions of Sub-section 3.1 and 3.2 of this section shall not apply to particulate matter, the shade or appearance of which is less than No. 3 Ringelmann or sixty percent (60%) opacity for a period of up to eight (8) minutes in any operating day for the purposes of building a fire of operating quality in the fuel burning equipment of a thermal drier.

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3.4. No person shall cause, suffer, allow or permit emission of particulate matter into the open air from any fugitive dust control system which is as dark or darker in shade or appearance as that designated as No. 1 Ringelmann or twenty percent (20%) opacity.

**§45-5-4. Control and Prohibition of Particulate Emissions from Coal Thermal Drying Operations of a Coal Preparation Plant.**

No person shall cause, suffer, allow or permit particulate matter to be vented into the open air from any thermal drier exhaust in excess of the following limitations:

4.1. Thermal driers installed on or before March 1, 1970, shall not exceed the emission limitations of the following table:

Total Plant Volumetric Flow Rate (Standard Cubic Feet Per Minute)	Maximum Allowable Particulate Loading Per Drier (Grains Per Standard Cubic Foot)
120,000 or less	0.12
172,000	0.11
245,000	0.10
351,000	0.09
500,000 and above	0.08

4.2. Thermal driers installed after March 1, 1970, but before October 24, 1974 shall not exceed the emission limitations of the following table:

Total Plant Volumetric Flow Rate (Standard Cubic Feet Per Minute)	Maximum Allowable Particulate Loading Per Drier (Grains Per Standard Cubic Foot)
75,000 or less	0.10
111,000	0.09
163,000	0.08
240,000 and above	0.07

4.3. Thermal driers which commenced construction or modification after October 24, 1974, shall meet emission limitations set forth under 45CSR16 and shall not be subject to Sub-sections 4.1, 4.2, 4.5, 10.4.b, or 10.4.c or this rule.

4.4. For the volumetric flow rate between any two consecutive volumetric flow rates stated in Sub-section 4.1 and Sub-section 4.2, limitations shall be as determined by linear interpolation. For the purpose hereof, the total volumetric flow rate shall be the total standard cubic feet of dry gas passed through all thermal driers at one plant location. This value shall be determined by methods which are acceptable to the Chief Director of Air Quality.

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4.5. When modifications are made to plants after March 1, 1970, that result in a significant increase in the total gas volume passing through a thermal drier(s), said drier(s) will be subject to the emission limitations of Sub-section 4.2 even though such modifications do not include the installation of a new thermal drier(s). Except as provided in subsection 4.3, modifications made to any thermal dryer after March 1, 1970 that result in a significant increase in the total gas volume passing through the dryer shall subject the dryer to the emission limitations of subsection 4.2 even though such modifications do not include the installation of a new thermal dryer.

4.6. No person shall circumvent this rule by adding additional gas to any drier exhaust or group of drier exhausts for the purpose of reducing the grain loading.

4.7. No person shall cause, suffer, allow or permit the exhaust gases from a thermal drier to be vented into the open air at an altitude of less than eighty (80) feet above the foundation grade of the structure containing the drier or less than ten (10) feet above the top of said structure or any adjacent structure, whichever is greater. In determining the desirable height of a plant stack, due consideration shall be given to the local topography, meteorology, the location of nearby dwellings and public roads, the stack emission rate, and good engineering practice as set forth in 45CSR20.

### **§45-5-5. Control and Prohibition of Particulate Emissions From an Air Table Operation of a Coal Preparation Plant.**

5.1. No person shall cause, suffer, allow or permit particulate matter to be vented into the open air from any air table exhaust in excess of 0.05 grains per dry standard cubic foot of exhaust gases.

5.2. No person shall circumvent this rule by adding additional gas to any air table exhaust or group of air table exhausts for the purpose of reducing the grain loading.

### **§45-5-6. Control and Prohibition of Fugitive Dust Emissions From Coal Handling Operations and Preparation Plants.**

6.1. No person shall cause, suffer, allow or permit a coal preparation plant or handling operation to operate that is not equipped with a fugitive dust control system. This system shall be operated and maintained in such a manner as to minimize the emission of particulate matter into the open air.

6.2. The owner or operator of thea coal preparation plant or handling operation shall maintain dust control of the premises and owned, leased, or controlled access roads by paving, or other suitable measures. Good operating practices shall be observed in relation to stockpiling, car loading, breaking, screening, and general maintenance to minimize dust generation and atmospheric entrainment.

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6.3. Owners or operators of coal handling operations and coal preparation plants located in the area of Brooke County west of State Route 2, north of an extension of the southern boundary of Steubenville Township in Jefferson County, Ohio, and south of the Market Street Bridge shall comply with the following fugitive dust control provisions:

a. Particulate matter mass emissions shall not exceed 0.001 pounds per ton of coal input from any coal crusher or coal screening operation.

b. Visible particulate emissions shall not exceed five percent (5%) opacity from any coal crushing or screening operation or from any coal conveying system.

c. A definitive, approvable plan to control fugitive dust entrainment and emissions from vehicular traffic and activity areas including but not limited to, paved and unpaved haulroads, stockpile areas, haulway berms, and plant access roads to public streets and highways shall be submitted to the Chief Director and such a plan shall be embodied in a consent order approved by the Chief Director. For plants or handling operations in existence on the effective date of this rule, the plan shall be submitted to the Chief Director on or before May 1, 1993. For plants or handling operations not in existence on the effective date of this rule, the plan shall be deemed filed upon filing of an application for construction, modification, or relocation pursuant to Section 8 of this rule.

A. Provide specific scheduled treatment frequencies for all areas of vehicular activity and stockpiling using water and/or chemical dust suppressants at sufficient application rates and intensities and wet flushing and vacuum sweeping for paved surfaces so as to reduce uncontrolled fugitive dust emissions by at least ninety-five percent (95%) as determined by methods and procedures in the document, "Control of Open Fugitive Dust Sources" (EPA 450/3-88-008, September, 1988) or other measures which achieve equivalent emission reductions as determined in accordance with the reference document.

B. Provide for daily monitoring and recordkeeping and not less than monthly reporting of dust control measures to the Chief Director, including, but not limited to water and chemical usage rates; chemical dust suppressant dilution ratios; accurate water and/or chemical flow rates or volumes through stationary or mobile dust suppression equipment and system pressures; beginning and ending times for treatment; traffic rates and types of vehicles using plant haulways, access roads and other vehicle activity areas; meteorological conditions relevant to control program requirements and equipment maintenance and downtime records.

C. Provide that no coal be unloaded from trucks which are not, upon entry to the plant or handling facility, tarped or otherwise covered to prevent dust entrainment, spillage or re-entrainment.

D. Provide that the wheels, tires and underbodies of all coal trucks be fully cleaned by an automatic washing system or equivalently effective system prior to exiting onto paved streets or highways from the premises of the plant

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or coal handling operation if such trucks travel over unpaved or soiled areas within the plant or coal handling operation.

E. Provide that all paved traffic areas be water flushed and vacuum or broom swept daily or alternatively be treated with water and/or chemical dust suppressants in accordance with Section 6.3.c.A of this rule.

F. Provide that all reports required under this section be certified to be true and accurate by the owner or operator prior to submission to the Chief Director.

G. Provide that the design of dust suppression systems or equipment, including but not limited to, number of trucks and truck tank capacity, spray bar or header volumes and pressures, spray system pump specifications, type of chemicals used, number and design of vacuum trucks maintained and other similar information be clearly incorporated.

d. The Chief Director may consider or incorporate exceptional provisions to the fugitive dust control plans or schedules approved pursuant to Section 6.3.c. taking into consideration such conditions as rainfall, snow cover, and freezing weather.

**§45-5-7. Monitoring of Operations.**

7.1. The owner or operator of a thermal drier shall install, calibrate, maintain, and continuously operate monitoring devices, as follows:

a. A monitoring device for the continuous measurement of the temperature of the gas stream at the exit of the thermal drier. The monitoring device is to be certified by the manufacturer to be accurate within plus or minus three degrees Fahrenheit ( $\pm 3^{\circ}\text{F}$ ).

b. For thermal driers that use venturi scrubber emissions control equipment:

A. A monitoring device for the continuous measurement of the pressure loss through the venturi constriction of the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within plus or minus one inch ( $\pm 1$  in.) water gauge.

B. A monitoring device for the continuous measurement of the water supply pressure to the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within plus or minus five percent ( $\pm 5\%$ ) design water supply pressure. The pressure sensor must be located close to the water discharge point or at such point as approved by the Chief Director.

7.2. All monitoring devices required under Sub-section 7.1 are to be recalibrated at least once annually.

**§45-5-8. Construction, Modification, and Relocation Permits.**

8.1. No person shall construct, modify, or relocate any coal preparation plant or coal handling operation without first obtaining a permit in accordance with the provisions of W. Va. Code §16-20-1§22-5-1 et seq., as amended, and the ~~Commission~~ Chief Director's rules for review and permitting of new or modified sources, except that coal handling operations which are not stationary sources as defined by Section 2.25.b of 45CSR13 are not required to obtain a permit under 45CSR13. The terms "construction", "modification" and "relocation" shall have the meaning ascribed to them in 45CSR13.

**§45-5-9. Operating Permits.**

9.1. ~~All~~ The owners and/or operators of each coal preparation plants and coal handling operations in existence on the effective date of this rule shall submit a complete application for an operating permit to the ~~Chief~~ Chief Director not later than ninety (90) days from the effective date of this rule.

The operating permit application shall contain sufficient information as in the judgement of the ~~Chief~~ Chief Director is necessary to enable him to determine whether the preparation plant ~~or coal handling operation~~ and air pollution control equipment or measures comply with this rule and other applicable rules. Information to be furnished in the permit application shall include but not be limited to:

a. A description of the nature, location, design capacity and typical and maximum operating schedules of the facility, including specifications and drawings showing its design and plant lay-out; and

b. A detailed description as to what systems of continuous emission reduction are employed by the facility, emission estimates, and any other information as necessary to determine the required emissions control technology or measures that must be applied.

9.2. It shall be unlawful for any person to operate a coal preparation plant ~~or coal handling operation~~ after the ninetieth (90th) day following the effective date of this rule if a completed permit application has not been submitted to the ~~Chief~~ Chief Director in accordance with this section.

9.3. Any owner or operator of a coal preparation plant ~~or coal handling operation~~ which is constructed, modified, or relocated after the effective date of this rule pursuant to a preconstruction permit as provided under Section 8 of this rule, shall submit a completed application for a new operating permit, or an amendment to an existing permit in the case of a modification, within sixty (60) days of the date of start-up of such new facility or modification.

9.4. No owner or operator of a coal preparation plant ~~or coal handling operation~~ shall be deemed to be in violation of this section during the pendency of the ~~Chief's~~ Chief Director's operating permit review period, provided that such owner or operator has submitted a complete operating permit application in accordance with

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this section and is otherwise in compliance with the Code and the rules promulgated thereunder.

9.5. If, after any investigation made by the Chief Director, or his designated representative, the Chief Director shall be of the opinion that an operating permit holder is violating the provisions of this rule, the Chief Director, may issue an order suspending or revoking the operating permit in the manner provided under W. Va. Code §16-20-6§22-5-5. Such order shall be considered a cease and desist order for purposes of administrative and judicial review. Operating permits revoked or suspended may be renewed by the Director upon a showing of compliance with the provisions of this rule, the permit, the Code, and all other rules.

9.6. The possession of a permit by any person shall in no way relieve the holder thereof of the obligation to comply with the provisions of this or any other rule or W. Va. Code §16-20§22-5-1 et seq; provided, however, that the owner or operator of a source for which an operating permit is required under this rule and under 45CSR30 shall only be required to obtain a permit under 45CSR30.

9.7. Upon determination by the Chief Director that the applicant for a permit for a coal preparation plant ~~or coal-handling-operation~~ may violate applicable emissions standards or other applicable rules or may cause violations of ambient air standards the Chief Director shall issue an order denying an operating permit for such facility in the manner provided under W. Va. Code §16-20-6§22-5-12. Such order shall be considered a cease and desist order for purposes of administrative and judicial review.

9.8. The Chief Director shall not issue an operating permit to any person who has not paid in full all fees required under 45CSR22 or any other applicable fee rule. Failure to pay applicable fees shall be cause for permit denial, suspension or revocation.

9.9. Operating permits issued under this rule shall be continuous unless revised, renewed, revoked, suspended, or otherwise changed under the provisions of this rule or any other applicable legislative rule.

9.10. Any owner or operator of a coal preparation plant which is operating in accordance with a permit application and provisions or conditions established for all plant operations within a pre-construction permit issued by the Director after December 31, 1988 (pursuant to 45CSR13, 45CSR14 or 45CSR19) may request that the Director use such pre-construction permit to establish operating permit provisions for the plant in lieu of completing a permit application under this rule. Such request shall be filed with the Director within sixty (60) days of the effective date of this rule if the coal preparation plant is operating on the effective date of this rule, or sixty (60) days before beginning operation if it is not in operation on the effective date of this rule. The Director shall grant or deny the request in writing. The Director shall provide specific reasons for denial of requests and shall provide a ninety (90) day period for submission of a complete application from the date of denial.

9.11. In the event that a coal preparation plant is completely inoperative on the effective date of this rule, or becomes completely inoperative within ninety (90) days thereafter, the owner or operator of the plant shall not be subject to the permit application filing schedule of Sub-section 9.1 of this rule if such owner or operator provides timely notice to the Director of the status of the plant and certifies that the plant shall remain inoperative for more than ninety (90) days from the effective date of this rule. A complete application for an operating permit shall be submitted to the Director at least sixty (60) days prior to the date that a plant subject to this Sub-section is to be reactivated.

**§45-5-10. Reports and Testing.**

10.1. At such reasonable times as the Chief Director may designate, the owner or operator of a coal preparation plant may be required to conduct or have conducted stack tests to determine the dust loading in exhaust gases and mass emission rates of particulate matter. All tests to determine compliance with exhaust gas dust concentrations and particulate matter mass emission rates shall be conducted in accordance with Methods 1-5 of 40 CFR 60, Appendix A as promulgated by USEPA on July 1, 1991 provided that all compliance tests must consist of not less than three (3) test runs, test run duration shall not be less than sixty (60) minutes, and not less ~~that~~ than thirty (30) standard cubic feet of exhaust gas must be sampled during each test run. Should the Chief Director exercise his option to conduct such tests, the operator will provide all necessary sampling connections and sampling ports to be located in such manner as the Chief Director may require, power for test equipment, and the required safety equipment such as scaffolding, railings, ladders, etc., to comply with generally accepted good safety practices.

10.2. The Chief Director, or his duly authorized representative, may conduct such other tests as he may deem necessary to evaluate air pollution emissions other than those noted in Sub-section 10.1.

10.3. The owner or operator shall submit a test protocol for the Chief's Director's approval not less than thirty (30) days prior to any test to determine compliance with this rule and shall provide at least fifteen (15) days notice of all compliance tests to the Chief Director.

10.4. Tests to determine compliance with the visible emission limitations of Sections 3 and 6 shall be conducted by certified visible emission observers in accordance with Method 9 of 40 CFR 60, Appendix A as promulgated by USEPA on July 1, 1991, and as follows:

a. In determining compliance with Sections 3.1 and 3.4, not less than twenty-four (24) consecutive visible emissions observations at fifteen (15) second intervals shall be recorded and averaged.

b. In determining a violation of Section 3.2, the observer shall record not less than twenty-four (24) nor more than two-hundred forty (240) visible emissions observations at fifteen (15) second intervals for each test and shall total the number of observations exceeding twenty percent (20%) opacity. More than

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twenty (20) consecutive or nonconsecutive observations exceeding twenty percent (20%) opacity recorded within any sixty (60) minute period shall constitute a violation except as provided in Section 10.4.c.

c. More than thirty-two (32) consecutive or nonconsecutive visible emissions observations exceeding twenty percent (20%) opacity during any period or periods within one (1) day in which an owner or operator of a thermal dryer is initiating and stabilizing operating combustion conditions in the furnace of the thermal dryer shall constitute a violation of Section 3.3 of this rule.

d. Nothing in this Sub-section, however, shall preclude any owner or operator or the Director from using opacity data from a properly installed, calibrated, maintained, and operated continuous opacity monitor from being used as evidence to demonstrate compliance or a violation of visible emission requirements of this rule.

10.5. Any stack venting thermal drier exhaust gases and/or air table exhaust gases or exhaust gases or air from any air pollution control device shall include straight runs of sufficient length to establish flow patterns consistent with acceptable stack sampling procedures. Flow straightening devices shall be required where cyclonic gas flow would exist in the absence of such devices.

**§45-5-11. Variance.**

11.1. Due to unavoidable malfunctions of equipment, emissions exceeding those provided for in this rule may be permitted by the Chief Director, upon specific application to the Chief Director, for periods not to exceed ten (10) days. Such application shall be made within twenty-four (24) hours of the malfunction.

11.2. In the case of major equipment failure, an additional time period may be granted by the Chief Director provided a corrective program is submitted to the Chief Director by the applicant. Upon determination by the Chief Director that a variance beyond ten (10) days should be granted, the Chief Director shall cause to be published in the State Register and within the county wherein the source lies and all contiguous West Virginia Counties a Class I legal advertisement of notice of intent to grant such a variance. Within fifteen (15) days of the publication of the later of either the State Register notice or Class I legal advertisement notice, any person whose interest may be affected by the granting of such variance may request a conference with the Chief Director to show cause why the variance should not be granted. After such conference or, if no conference is requested, fifteen (15) days after publication of the later of either the State Register notice or Class I legal advertisement notice, the Chief Director may issue an order granting such variance.

11.3. Any person, whose interest may be affected by the granting of a variance in excess of ten (10) days and who requests a conference with the Chief Director pursuant to the provisions of 11.2 of this section, may appeal an order of variance to the Commission in the same manner as appeals of cease and desist orders under the provisions of W. Va. Code ~~§16-29-6~~§22-5-5.

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§45-5-12. Transfer of Permits.

12.1. Any person holding a valid permit may request that the Chief Director transfer the permit to another person providing the following conditions are met:

a. The permit holder describes, in writing, the reasons for or circumstances of the transfer and certifies that the facility for which the permit pertains is in compliance with all permits issued by the Chief Director and all applicable rules of the Commission.

b. The transferee identifies and acknowledges, in writing, that it accepts and will comply with all permits issued by the Chief Director and will comply with all applicable rules.

c. The permit holder or transferee pays, at the time of the request for transfer, a transfer fee of two-hundred dollars (\$200) payable to the ~~West Virginia~~-Air Pollution Control ~~Commission~~-Fund. Such payment satisfies the requirement of Section 4.2 of 45CSR22.