

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--
NOTICE OF EXTENSION OF COMMENT PERIOD

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

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

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

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

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY
INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT
PERIOD WILL END ON July 28, 1999 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING
ADDRESS.

Edward L. Kropp, Chief

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.

Edward L. Kropp/Karen G. Waters

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

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OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

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

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

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

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

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 19, 1999 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality - Conference Room
1558 Washington, Street East
Charleston, WV 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Mr. Edward L. Kropp, Chief

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Office of Air Quality

1558 Washington Street, East

The issues to be heard shall be limited to the proposed rule.

Charleston, WV 25311

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

Karen G. Watson
Karen G. Watson, Attorney

\$7.20



Executive Office
10 McJunkin Road
Nitro, West Virginia 25143-2506
Telephone: 304-759-0515
Fax: 304-759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

June 14, 1999

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

RE: 45CSR5 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office as "Notice of Public Hearing/Comment Period."

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

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp
Karen Watson
Carrie Chambers

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

RULE TITLE: 45CSR5 - "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq.

B. SUMMARY OF RULE:

45CSR5 "To Prevent and Control Particulate Air Pollution From The Operation of Coal Preparation Plants and Coal Handling Operations" (effective date May 1, 1995) set standards for particulate matter weight and visible emissions from coal preparation plants and coal handling operations. The rule also established monitoring, record keeping, and reporting requirements and requires that each owner/operator obtain an annual operating permit from the Office of Air Quality without which the plant cannot be operated.

The revisions contained herein are intended to streamline the requirements of this rule and to incorporate the requirements of 45CSR1 for coal refuse sites. 45CSR1 is to be repealed. These changes will bring all of the Office of Air Quality coal related rules into one rule. The title of 45CSR5 is being changed to reflect this revision and will read: "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas". Revisions change opacity limits and methods of determination for certain operational exception periods. Other revisions are intended to harmonize this rule with other rules of the Office of Air Quality and to reference the "General Permit" for coal preparation plants and handling facilities.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The purpose of 45CSR5 is to establish particulate matter weight and visible emission standards for coal preparation and coal handling operations in West Virginia. The revisions which incorporate the requirements of repealed 45CSR1 will establish standards for coal refuse disposal areas. 45CSR5 is part of the West Virginia State Implementation Plan (SIP) approved by the USEPA to assure attainment and maintenance of attainment with the National Ambient Air Quality Standards for particulate matter. The revisions proposed herein were initiated by the Office of Air Quality as part of a broad effort to modernize and streamline all the Office rules. The current revision process is also intended to update and harmonize this rule with other rules of the Office of Air Quality. The proposed revisions are

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.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

There is no federal counterpart regulation; therefore, a determination of stringency is not required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At their June 10, 1999 meeting, the Environmental Advisory Council reviewed and discussed this rule - there were no substantive changes as a result of their discussion. (See attached minutes of that meeting.)

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

June 10, 1999, Director's Conference Room, Nitro

The sixteenth meeting of the DEP Advisory Council was held Thursday, June 10, 1999, in the Director's Conference Room located in Nitro. Chairman Mike Miano called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Miano, Chairman
Jacqueline Hallinan
William Raney
Rick Roberts
William Samples

Environmental Protection:

Bill Adams	Pam Nixon
Andy Gallagher	Rocky Parsons
Tony Grbac	Cap Smith
Randy Huffman	Charlie Sturey
Mike Johnson	Barbara Taylor
Mike Lewis	Karen Watson
Robert Keatley	Mike Zeto

1) Review and Approval of March 22, 1999 Minutes. Chairman Miano called the meeting to order at 10:00 a.m. The first item on the agenda was approval of the minutes of the March 22 Advisory Council; they were approved as written.

2) Discussion of Proposed Rule Amendments - 2000 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's new rule-making procedure that was implemented by Director Miano in September 1998 to involve the Advisory Council in DEP's rule-making process as early as possible to enable the Council to review, comment, and make recommendations to the Director on DEP's proposed legislative rule changes before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

Chairman Miano said he would like to begin by saying he hoped all Council members had received their draft rules by E-mail without any complications and they were able to review them before the meeting. He informed the Council that due to the large number of rules being proposed for the 2000 Legislative Session, DEP's program offices would review them with the

Council as thoroughly as possible, in the allotted time frame, and try to answer any questions or concerns the Council may have.

The following Office of Air Quality's proposed rule amendments were discussed by Karen Watson, OAQ, with assistance from Richard Keatley, also from the OAQ office:

- **45CSR1 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COAL REFUSE DISPOSAL AREAS"**
- **45CSR2 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM COMBUSTION OF FUEL IN INDIRECT HEAT EXCHANGERS"**
- **45CSR3 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF HOT MIX ASPHALT PLANTS"**
- **45CSR4 - "TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS"**
- **45CSR5 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS"**
- **45CSR6 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE"**
- **45CSR7 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MANUFACTURING PROCESSES AND ASSOCIATED OPERATIONS"**
- **45CSR10 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE EMISSION OF SULFUR OXIDES"**
- **45CSR12 - "AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE"**
- **45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"**
- **45CSR17 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER"**
- **45CSR18 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM DIRECT MEAT-FIRING DEVICES"**
- **45CSR23 - "TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS"**
- **45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES"**
- **45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"**
- **45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"**

Karen began by bringing the Council up to date on the status of two OAQ rules that were filed during the last session (or late in the session). 45CSR8 revised the ambient air quality for sulfur oxides and particulate matter, and 45CSR9 pertained to ambient air quality standards for carbon monoxide and ozone. The DC Circuit Court of Appeals has ordered EPA to show how they arrived at the new standards - EPA may go back to the previous standards. Karen also apprised the Council on the N_{ox} State Implementation Plan. The Circuit Court stayed the implementation of that rule and there are no plans to develop any other amendments in the

immediate future. 45CSR28, which is the emissions trading rule that was filed late in the 1999 Session, was not taken up by the Legislature, but plans are to put the rule on the July agenda of the Interim Legislative Committee.

Karen explained the reason for the unusually large number of DEP rules that are being filed for the next Legislative Session. She informed the Council that several of the rules were outdated and were amended for consistency and streamlining, and are a result of months of on-going meetings with stakeholders -- involving both the regulated community and citizens. A particulate matter and sulfur oxide work group was also involved. Those rule amendments as a result of the stakeholders process include: 45CSR1 (which is being repealed and replaced with language in 45CSR5), 45CSR2, 3, 4, 5, 6, 7, 10, 12, 17, and 18 (which is being repealed since the rule is no longer deemed necessary). The amendments to the remainder of the rules, 45CSR16, 23, 25, 33, and 34 were necessary to adopt by reference definitions, clarifications, technical amendments, etc., recently adopted by US EPA.

After several minutes of discussion, the Advisory Council recommended to the Director that the following amendments be made to the OAQ rules:

Mr. Samples pointed out that 45CSR2 and 45CSR7 contain different definitions for the term "opacity." The agency responded that this discrepancy was inadvertent and the language should be as it is in 45CSR2. The agency agreed to revise 45CSR7, subsection 2.23, accordingly.

Mr. Larry Harris was unable to attend the meeting; however, he expressed the following comments on 45CSR10 and 45CSR33 by e-mail. He stated that the State's rules should be more stringent than the federal counterpart regulations, since the State's streams are being adversely impacted. The agency responded that, at this point in time, it does not possess sufficient evidence to make the written finding that is required by WV Code §22-2-3a before promulgating a rule which is more stringent than a counterpart federal regulation.

Cap Smith and Mike Zeto discussed the following Office of Waste Management proposed rule amendments:

- 33CSR2 - "Sewage Sludge Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"

Mike Zeto briefed the Council on the proposed amendments to 33CSR2. He stated that in 1996 the Legislature mandated DEP to perform a study on soil limitations for sewage sludge land application sites. These amendments (as a result of the study) were to be proposed by June 30, 1999. Other amendments to the rule include specifying the analytical method used for soil analysis, placing conditions on variances from the soil limits for land application sites, providing an incentive for municipalities to produce higher quality compost products, and adjusting the sewage sludge limits for four metals. Mr. Zeto told the Council these amendments are being proposed to update other related areas of the rule in an attempt to provide better management of sewage sludge within the state.

Cap Smith discussed 33CSR20 with the Council. He informed the Council that amendments are proposed in section 2 of the rule that will allow the Office of Waste Management to delist hazardous wastes, which has previously been handled by EPA. The other significant amendments that are being proposed by adoption of the Federal Register pertain to revision standards for owners and operators of closed and closing hazardous waste management facilities, post closure permit requirements, and the closure process. These amendments are referenced throughout the rule and will hopefully expedite site cleanup while maintaining environmental protection.

There were several minutes of discussion on OWM's proposed rule amendments; however, no recommendations were made to the Director concerning the amendments.

Mike Lewis, Office of Oil and Gas, discussed the following new proposed rule:

- **35CSR7 - "Well Operations - Within and Around Gas Storage Reservoirs"**

Mike informed the Council that 35CSR7 is a proposed "new" rule for the O&G Office. The rule is needed to provide protection of the environment, the public, and the state's natural gas resources. It is the intent of the proposed rule to accomplish this by addressing certain operating procedures that oil and gas and gas storage operators are to use when drilling into or through a gas storage reservoir or the gas storage reservoir protective area. In order to assure absence of leaking gas, the proposed rule requires gas storage operators to conduct monitoring and inspections of gas storage wells.

There were no questions or discussion by the Council on this proposed rule.

The following proposed rules were discussed by the Office of Mining and Reclamation:

- **38CSR2 - "Surface Mining and Reclamation Rule"**
- **38CSR2A - "Rules for Mining and Restoration for Sandstone, Limestone, and Sand"**
- **38CSR2B - "RULES FOR MINING AND RECLAMATION OF MINERALS OTHER THAN COAL"**

Ed Griffith, Office of Surface Mining, discussed the proposed amendments to the Surface Mining and Reclamation Rule. Ed told the Council that there are only minor amendments being proposed to this year's rule. The proposed definition of "woodlands" in subsection 2.136 relates to the utilization of commercial woodlands in Approximate Original Contour variance areas. This change is being proposed in order for the state to meet the federal policy that is expected to change in July 1999. The proposed amendment to change the bonding requirements of mining operations that request variances from contemporaneous reclamation to the maximum amount per acre bond (\$5,000 per acre) is found in subdivision 14.15.f. All other amendments are being proposed in order to meet the requirements of the Office of Surface Mining's program amendments.

Rocky Parsons, OMR's Philippi Office, next addressed OMR's proposed rules 38CSR2A and 2B. Rocky explained to the Council members that 38CSR2B has been in place since 1983 and regulates all minerals other than coal. However, in accordance with the requirement that separate rules for limestone, sandstone, and sand are to be promulgated, DEP is proposing

38CSR2A which will regulate only those minerals - 38CSR2B will regulate all minerals other than limestone, sandstone, sand, and coal. Both proposed rules will regulate roads, blasting, drainage control, methods of operation, excess spoil disposal, revegetation, mapping, transfer of permits, permit renewals, revisions and incidental boundary revisions. 38CSR2A will provide provisions for restoration and 38CSR2B will include provisions for reclamation. Rocky gave the Council a brief history on the roadblocks the agency has encountered in the past several years in their attempt to amend the quarry statute. He said since the agency has been unsuccessful in that approach, it has become necessary to try to accomplish this through rule making. He informed the Council of a public meeting held the previous week to discuss the two proposed rules. He said the meeting was well attended and he believes the rules were well received by everyone in attendance.

The three OMR proposed rules were discussed by the Council members. Bill Raney said that although Rocky stated that the quarry rules have been well received by industry and the citizens, he is concerned about whether there has been enough time for the review of the proposed rules after they were drafted. He believes there would be a smoother transition into the rule making process, i.e., the public hearing/comment period, etc., if there had been more involvement from outside DEP during the drafting of the rules.

Mr. Larry Harris commented by e-mail 38CSR2A and 2B. His question is whether the siltation measures include silt fences where runoff might enter streams. He said it is not apparent what best management practices are for this situation, and he wonders if it needs to be spelled out. He knows of some operations in quarries where streams muddy after rainfalls, such as the Elkins and Waco quarries near Snowshoe, and he feels this is harming the streams. Do the new rules address this?

Rocky Parsons responded by saying that design criteria for drainage control structures is found in the technical handbook. Silt fences are not adequate for sediment control. The drainage system must be designed to hold .125 ac/ft of sediment for each acre of disturbed land. All runoff must pass through a drainage control structure. There is a provision for less sediment control (1/2 factor) for certain circumstances as approved by the Director. Effluent limits as established in the NPDES permit must be met.

Tony Grbac, Office of Surface Mining, addressed the following rule:

199CSR1 - "SURFACE MINING BLASTING RULE"

Tony began by briefing the Council on the history of the Surface Mining Blasting Rule. This rule is being proposed to comply with SB681 - passed during the last session. This bill created the Office of Explosives and Blasting and the Office of Coalfield Community Development, which is under the West Virginia Development Office. The proposed rule will regulate blasting laws and rules associated with all surface-mining operations. All duties currently performed by OMR related to blasting, and all rules which now regulate blasting (38CSR2C) will be transferred to this new office. Besides regulating blasting on all surface mining operations, it will also implement and oversee pre-blast survey processes; maintain and operate a system to receive and address questions, concerns and complaints relating to mining

operations; determine the qualifications for individuals and firms performing pre-blast surveys; establish the education, training, examination and certification of blasters; administer a claims process for property damage caused by blasting; and conduct a study of blasting and make recommendations regarding any appropriate rule or code changes.

Tony explained that the revenue generated by the proposed fee in 199CSR1 (one-half cent times the number of pounds of explosive material used during the preceding month for any purpose on the surface mining operations) would fund both the offices, as required by SB681. After one year of collection, both offices are to report to the Legislature as to whether the revenue collected is sufficient to operate both offices.

After several minutes of discussion between DEP and the Council members, Bill Raney expressed his concern in filing the rule for public hearing in the specified time frame. Mr. Raney asked if anyone outside DEP has been involved in drafting the rule. OMR answered by saying the rule was drafted by several staff within OMR. Mr. Raney replied that he believes there will be serious concerns with this rule once industry has had an opportunity to review it. He believes the rule drafting process definitely needs input from firms and individuals outside DEP, and he thinks the process will go smoother once everyone has had the opportunity to address their concerns. Mr. Raney recommended that the Director withhold this rule from the list of rules DEP proposes to file for public hearing/comment period in the coming week to give all interested parties a chance to participate in drafting the rule.

After discussion of this recommendation, Chairman Miano said he believes the best approach would be to continue with the filing of the proposed rule for public hearing, start the rule in the normal process and time frame, and in the meantime he would commit to putting together a work group of interested parties to discuss the rule. If DEP feels that more time is needed once the group begins their work on the rule, he will consider the possibility of either extending the comment period or filing for another public hearing. He said he will also decide in the near future whether DEP will file the rule as an "Emergency Rule" since HB 681 will become effective on June 11.

Council members also pointed out a typographical error in subdivision 3.9.a.3. of the rule relating to cross-references that will be corrected by DEP.

Barb Taylor and Mike Johnson, Office of Water Resources, briefed Council on the following rules:

- 47CSR57A - "Groundwater Protection Standards at Steam Electric Generating Facilities"
- 47CSR26 - "Water Pollution Control Permit Fee Schedule"
- 47CSR31 - "State Water Pollution Control Revolving Fund Program Rule"

Barb described the proposed "new" rule relating to Groundwater Protection Standards at Steam Electric Generating Facilities. She noted that the rule is a result of a Notice of Intent filed on October 24, 1994, by the West Virginia Steam Electric Generation Industry, with the Director of DEP, in accordance with 47CSR57 to apply for a class variance for all West Virginia power stations and associated disposal sites. At that time, DEP provided AEP and AP with the

opportunity to conduct a four-year study to gather the necessary data to support their variance request. The objectives were met by assembling and reviewing data, estimating potential impacts to receptors, and performing an economic assessment impact analysis to the industry, commercial enterprises, and citizens at large if compliance with the Groundwater Protection Act were required without benefit of the variances. After review of the four-year study, the Director determined that granting this request for a variance at these locations would not pose adverse effects to human health or the environment. There are no human or environmental sensitive receptors between the coal storage areas or as ponds; therefore, it is unlikely there will be adverse affects. Barb gave each member a copy of the four-year study on which the Director made his determination.

Chairman Miano told Council that DEP is definitely willing to look at such cases where extensive research and study have been done by the regulated community to back up their findings before granting such variances, and believes DEP will see more studies like this in the future.

Barb next apprised the members on the proposed amendments of the Water Pollution Control Permit Fee Schedule. She stated that amendments are being proposed as a result of HB 2684, passed March 11, 1999, and effective ninety days from passage. The Director is required to implement an emergency rule to implement the fee schedule authorized by the amendments by July 1, 1999. This rule was filed as an "Emergency Rule" on June 7, 1999.

Mike Johnson, Office of Water Resources' Construction Assistance Office, briefed the Council on 47CSR31 - the Water Pollution Control Revolving Fund Program rule. The amendments to this rule are being proposed to allow the State Revolving Fund low interest terms to be extended from 20 years to 30 years for communities that qualify as "disadvantaged." There is only one other state in the country to receive such approval from EPA. Mike informed the Council that he was only recently made aware of this extension by EPA to extend the low interest loans from 20 to 30 years while attending a meeting out of state. This rule was filed as an "Emergency Rule" on May 24, 1999.

Council members unanimously agreed that Mike Johnson should be commended for gathering this information and proposing the amendment to the rule that will enable disadvantaged communities to immediately take steps toward constructing watershed projects that will provide affordable monthly sewer rates.

Open Discussion:

Chairman Miano and Council members expressed their compliments to the program offices for all their hard work, especially with the stakeholders process -- it is obvious a lot of hard work has gone into the process in order to make their efforts more productive.

Bill Raney asked a question relating to the "More or Less" Stringency statement that appears on the front of some DEP rules, but not on others, and voiced his concern if DEP is paying close attention to this, or if the same statement is appearing with all proposed rules. Carrie Chambers from the Director's Office explained that statement was once required to be included in the "General" section of each rule; however, it is now placed in the briefing document that is attached to each rule, and required by the Secretary of State's Office and the

Legislative Rule-Making Review Committee, before it is filed. She went on to explain that with the rush to get draft copies of the rules to Council members as soon as possible, some of the Briefing Documents had not been completed, but would be attached to all DEP rules before they are filed for public hearing. Chairman Miano went on to say it is his belief that all program offices are carefully scrutinizing each rule before that decision is made.

Chairman Miano thanked Council for taking time from their busy schedules to review the extensive list of DEP's proposed rules. He informed the Council that the minutes would be left open for comment until Wednesday, June 16, at which time the minutes will be attached to the rules and filed with the Secretary of State's Office and the Legislative Rule-Making Review Committee for notice of public hearing/comment period.

Before adjourning the meeting, the Council informed Chairman Miano that they would prefer beginning future meetings at 10:00 a.m., instead of the usual time of 1:00 p.m. The meeting was then adjourned at 3:30 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR5 - "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"

Type of Rule: Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East
Charleston, WV 25311-2599

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 proposed revisions to 45CSR5, contained herein, will have no effect on the cost to the Office of Air Quality for continued implementation of this rule. Costs are covered under provisions budget estimates.
3. Objectives of these rules: The objective of this rule is to set standards for particulate matter weight and visible emissions from coal preparation plants and coal handling operations. As revised, this rule will incorporate standards for coal refuse disposal areas. These standards were previously contained in 45CSR1 which is to be repealed.

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.

The changes to 45CSR5 proposed herein will have a negligible effect on the cost to owners/operators of facilities regulated by this rule.

C. Economic Impact on Citizens/Public at Large.

The changes to 45CSR5 proposed herein will have no economic impact on the citizens or public at large in West Virginia.

Date: 6/11/99

Signature of Agency Head or Authorized Representative

Karen G. Watson

Karen G. Watson, Attorney

JUN 15 9 47 AM '99

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 5
TO PREVENT AND CONTROL AIR POLLUTION FROM
THE OPERATION OF COAL PREPARATION PLANTS, ~~AND~~ COAL
HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS

§45-5-1. General.

1.1. Scope. -- The purpose of ~~Series 5~~ this rule is to prevent and control air pollution from the operation of coal preparation plants, ~~and~~ coal handling operations and coal refuse disposal areas.

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

1.3. Filing Date. -- ~~April 28, 1995~~.

1.4. Effective Date. -- ~~May 1, 1995~~.

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

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces 45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Disposal Areas" which was filed on January 1, 1965 and became effective on January 1, 1965.

1.6. Former Rules. -- This legislative rule amends 45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations" which was filed on April 28, 1995 and became effective May 1, 1995.

§45-5-2. Definitions.

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

~~2.2. [Reserved]~~

~~2.112.~~ "Air Pollution Control Equipment" means any equipment used for collecting gasborne particulate matter for the purpose of preventing or reducing particulate matter emissions into the open air.

~~2.103.~~ "Air Table" means a device using a gaseous separating media for the primary purpose of improving the product quality.

~~2.54.~~ "Coal Preparation Plant" means and includes any facility (excluding underground mining operations) that prepares coal by one or more of the following processes: screening, 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:

2.54.a. Any facility that is designed to process less than two hundred (200) tons of coal per day; ~~or~~

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

2.54.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.

2.5. "Coal Refuse" means any combination of carbonaceous waste with rock, shale, culm boney, slate, clay and related materials associated with or near a coal seam, which are either brought above ground or otherwise removed from the mine

in the process of mining coal, or which are separated from coal during the cleaning or preparation operations: Provided that coal refuse shall not mean overburden from strip-mining operations or incombustible materials from mine shafts and mine tunnels.

2.6. "Coal Refuse Disposal Area" means any area or plot of land which is used as a place for dumping, storage or disposal of coal refuse. A coal refuse pile must be contained in a single coal refuse disposal area; however, a coal refuse disposal area may contain two (2) or more coal refuse piles if the area is so designated.

2.7. "Coal Refuse Pile" means any deposit of coal refuse on the surface which is intended as a permanent disposal of or long-term storage of such material. Continuous deposits of coal refuse and deposits, which are not separated, shall be considered a single coal refuse pile.

2.198. "Director" means the Director of the Division of Environmental Protection or such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §§ 22-1-6 or 22-1-8.

2.209. "Division of Environmental Protection" or "DEP" means that Division of the West Virginia Division of Environmental Protection which is created by the provisions of W. Va. Code §22-1-1, et seq.

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

2.811. "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 dryer.

2.1612. "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.

2.1713. "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.

2.414. "Handling Operation" means and includes, but shall is not be limited to, all coal grinding, crushing, picking, screening, conveying, storing, and stockpiling operations not associated with 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.

2.15. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background as determined by any chart, recorder, indicator, device or method which is a standardized method for the measurement approved or accepted for use by the Director.

2.16. "Operation of a Coal Refuse Disposal Area" means the act of disposing, depositing or dumping of coal refuse upon a coal refuse disposal area or of physically altering the coal refuse disposal area, except by removal of ashes, red dog or other material from a burned-out coal refuse pile.

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

2.318. "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 laws of this or any other state or country, and any firm, partnership or association of whatever nature.

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

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

~~2.1320.~~ "Stack", for the purpose of this rule, means, but shall is 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.

~~2.1221.~~ "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.

~~2.922.~~ "Thermal Dryer" means a device using fuel burning equipment for the primary purpose of reducing the moisture content of coal.

~~2.23.~~ Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W. Va. Code §22-5-1 et seq.

§45-5-3. 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 or greater, except as noted in ~~Sub~~-subsection 3.2.,

3.2. The provisions of subsection 3.1 ~~of this section~~ shall not apply to particulate matter ~~the shade or appearance of emitted~~, which is less than ~~No. 3 Ringelmann or sixty percent (60%)~~ forty percent (40%) opacity for a period ~~or periods aggregating no more than five (5)~~ six (6) minutes in

any sixty (60) minute period during operation, based on a six minute block average.

3.3. The provisions of subsections 3.1 and 3.2 ~~of this section~~ shall not apply to particulate matter ~~the shade or appearance of emitted~~, which is less than ~~No. 3 Ringelmann or sixty percent (60%)~~ forty percent (40%) opacity for a period of ~~up to eight (8) two consecutive six (6)~~ up to eight (8) two consecutive six (6) minutes averages in any operating day for the purposes of building a fire of operating quality in the fuel burning equipment of a thermal dryer.

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 or greater.

§45-5-4. Control and Prohibition of Particulate Emissions ~~f~~From Coal Thermal Drying Operations of a Coal Preparation Plant.

~~4.1.~~ No person shall cause, suffer, allow or permit particulate matter to be vented into the open air from any thermal dryer exhaust in excess of the following limitations:

~~4.1. Thermal driers installed 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	Maximum Allowable
Flow Rate	Particulate Loading
(Standard Cubic Feet	Per Drier (Grains Per
Per Minute)	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, 210.4.b, or 210.4.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 Director of Air Quality.~~

~~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:~~

4.1.a. Thermal dryers which commenced construction or modification after October 24, 1974, shall meet emission limitations set forth under 45CSR16.

4.1.b. Thermal dryers installed before October 24, 1974, that are not subject to

subdivision 4.1.a, shall comply with the limitations and requirements set forth in the Appendix to this rule.

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

4.73. No person shall cause, suffer, allow or permit the exhaust gases from a thermal dryer 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 dryer 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 and Coal Refuse Disposal Areas.

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 a 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.

6.3. Fugitive emissions from coal preparation plants and handling operations which are subject to this rule shall be exempt from the provisions of 45CSR17, provided that such sources shall not be exempt from the provisions of W.Va. Code §§22-5-1 et seq., including the provisions of §22-5-3 relating to statutory air pollution.

6.34. 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:

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

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

6.34.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 Director and such a plan shall be embodied in a consent order approved by the Director. For plants or handling operations in existence on the effective date of this rule, the plan shall be submitted to the 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 §10 of this rule.~~

6.4.c.1. 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.

6.4.c.2. Provide for daily monitoring and recordkeeping and not less than monthly reporting of dust control measures to the 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.

6.4.c.3. 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.

6.4.c.4. 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 or coal handling operation if such trucks travel over unpaved or soiled areas within the plant or coal handling operation.

6.4.c.5. 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 paragraph 6.34.c.1, of this rule.

6.4.c.6. 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 Director.

6.4.c.7. 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.

6.34.d. The Director may consider or incorporate exceptional provisions to the fugitive dust control plans or schedules approved pursuant to Section paragraph 6.34.c. taking into consideration such conditions as rainfall, snow cover; and freezing weather.

§45-5-7. Standards for Coal Refuse Disposal Areas.

7.1. In order to prevent and control air pollution from coal refuse disposal areas, the operation of coal refuse disposal areas shall be conducted in accordance with the standards established by this section.

7.2. Coal refuse is not to be deposited on any coal refuse disposal area unless the coal refuse is deposited in such a manner as to minimize the possibility of ignition of the coal refuse.

7.3. Coal refuse disposal areas shall not be so located with respect to mine openings, tipples or other mine buildings, unprotected coal outcrops or steam lines, that these external factors will contribute to the ignition of the coal refuse on such coal refuse disposal areas.

7.4. Vegetation and combustible materials shall not be left on the ground at the site where a coal refuse pile is to be established, unless it is

rendered inert before coal refuse is deposited on such site.

7.5. Coal refuse shall not be dumped or deposited on a coal refuse pile known to be burning, except for the purpose of controlling the fire or where the additional coal refuse will not tend to ignite or where such dumping will not result in statutory air pollution.

7.6. Materials with low ignition points used in the production or preparation of coal, including, but not limited to, wood, brattice cloth, waste paper, rags, oil and grease, shall not be deposited on any coal refuse disposal area or in such proximity as will reasonably contribute to the ignition of a coal refuse disposal area.

7.7. Garbage, trash, household refuse and like materials shall not be deposited on or near any coal refuse disposal area.

7.8. The deliberate ignition of a coal refuse disposal area or the ignition of any materials on such an area by any person or persons is prohibited.

§45-5-8. Burning Coal Refuse Disposal Areas.

8.1. Each burning coal refuse disposal area which allegedly causes air pollution shall be investigated by the Director.

8.2. Each burning coal refuse disposal area which causes air pollution shall be considered on an individual basis by the Director. Consistent with the declaration of policy and purpose set forth in W. Va. Code §22-5-1, as well as the established facts and circumstances of the particular case, the Director shall determine and may order the effectuation of those air pollution control measures which are adequate for each such coal refuse disposal area.

8.3. With respect to all burning coal refuse disposal areas, the person responsible for such coal refuse disposal areas or the land on which such coal refuse disposal areas are located shall use due diligence to control air pollution from such coal refuse disposal areas. Consistent with the declaration of policy and purpose set forth in W.

Va. Code §22-5-1, the Director shall determine what constitutes due diligence with respect to each such burning coal refuse disposal area. When a study of any burning coal refuse disposal area by the Director establishes that air pollution exists or may be created, the person responsible for such coal refuse disposal area or the land on which such coal refuse disposal area is located shall submit to the Director a report setting forth satisfactory methods and procedures to eliminate, prevent or reduce such air pollution. The report shall be submitted within such time as the Director shall specify. The report for the elimination, prevention or reduction of air pollution shall contain sufficient information, including, completion dates, to establish that such corrective measures can be executed with due diligence. If approved by the Director, such corrective measures and completion dates shall be embodied in a consent order issued pursuant to W. Va. Code §§ 22-5-1 et seq. If such report is not submitted as requested or if the Director determines that the methods and procedures set forth in such report are not adequate to reasonably control such air pollution he or she shall issue an order requiring the elimination, prevention or reduction of such air pollution.

§45-5-79. Monitoring of Operations.

79.1. The owner or operator of a thermal drier shall install, calibrate, maintain, and continuously operate monitoring devices, as follows: Thermal dryers subject to subsection 4.1 shall meet the monitoring and calibration requirements set forth under 45CSR16.

7.1.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 ($\pm 3^{\circ}\text{F}$).

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

b.1. 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 (± 1 in.) water gauge:

b.2. 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 Director:

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

9.2. The owner or operator of a thermal dryer subject to subsection 4.2 shall install, calibrate, maintain and continuously operate monitoring devices, as set forth in the Appendix to this rule.

§45-5-810. Construction, Modification; and Relocation Permits.

810.1. 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 §§22-5-1 et seq. and the 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 subdivision 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.

§45-5-911. Operating Permits.

911.1. The owner or operator of each coal preparation plant in existence on the effective date of this rule shall submit a complete application for an operating permit to the Director not later than ninety (90) days from the effective date of this rule.

11.1.a. The operating permit application shall contain sufficient information as in the judgement of the Director is necessary to enable him to determine whether the preparation plant 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:

911.1.a.1. 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

911.1.ba.2. 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.

911.2. It shall be unlawful for any person to operate a coal preparation plant ~~after the ninetieth (90th) day following the effective date of this rule if a completed permit application has not been submitted to the Director in accordance with this section, which was in existence on May 1, 1995, that has not submitted a completed operating permit application to the Director in accordance with this section by August 1, 1995.~~

911.3. Any owner or operator of a coal preparation plant which is constructed, modified; or relocated after the effective date of this rule pursuant to a preconstruction permit as provided under ~~Section 810 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 or relocation.~~

911.4. No owner or operator of a coal preparation plant shall be deemed to be in violation of this section during the pendency of the Director's operating permit review period, provided that such owner or operator has submitted a complete operating permit application in accordance with this section and is otherwise in compliance with the Code and the rules promulgated thereunder.

11.4.a. The owner or operator shall expeditiously correct any deficiencies and errors

found in the permit application or provide necessary omitted or supplemental information identified to the owner or operator by the Director or his or her duly authorized representative.

11.4.b. The owner or operator shall submit a written and certified response to any written Notice of Deficiency (NOD) forwarded by the Director or his or her duly authorized representative within twenty (20) days of receipt of the NOD.

911.5. If, after any investigation made by the Director, or his designated representative, the Director shall be of the opinion that an operating permit holder is violating the provisions of this rule, the Director; may issue an order suspending or revoking the operating permit in the manner provided under W. Va. Code §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.

911.6. The possession of an operating 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 §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;~~

11.6.a. 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 submit an operating permit application and to obtain an operating permit pursuant to 45CSR30; and

11.6.b. That the owner or operator of a source for which an operating permit is required under this rule who chooses to obtain a "General Operating Permit for the Construction, Modification, Relocation, Operation and Prevention and Control of Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations" (General Permit) pursuant to 45CSR13 shall only

be required to submit the required registration and obtain coverage under the General Permit.

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

911.8. The 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 operating permit denial, suspension or revocation, provided that the payment of fees required under 45CSR22 and possession of a 45CSR22 certificate to operate shall not constitute possession of a valid operating permit as required under this rule.

911.9. 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.~~

~~911.11 10. 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 subsection 9.11 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. If not previously submitted, A complete application for an operating permit shall be submitted to the Director at least sixty (60) days prior to the date that a an inactive plant subject to this Sub-section is to be reactivated.~~

~~§45-5-1012. Reporting and Testing.~~

~~1012.1. At such reasonable times as the 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 Part 60, Appendix A as promulgated by US EPA 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 than thirty (30) standard cubic feet of exhaust gas must be sampled during each test run. Should the 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 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.~~

~~1012.2. The 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 subsection ~~†~~12.1.

~~†~~12.3. The owner or operator shall submit a test protocol for the 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 Director.

~~†~~12.4. 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 Part 60, Appendix A as promulgated by US EPA on July 1, 1991, and as follows:

~~†~~10.4.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.

~~†~~10.4.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 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.

~~†~~10.4.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.

~~†~~12.4.d5. Nothing in this Sub-subsection 12.4, 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.

~~†~~12.56. Any stack venting thermal dryer 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-~~†~~13. Variance.

~~†~~13.1. Due to unavoidable malfunctions of equipment, emissions exceeding those provided for set forth in this rule may be permitted by the Director, upon specific application to the Director, for periods not to exceed ten (10) days. Such application shall be made within twenty-four (24) hours of the malfunction.

~~†~~13.2. In the case of major equipment failure, an additional time period may be granted by the Director provided a corrective program including a final compliance date is submitted to the Director by the applicant. Upon determination by the Director that a variance beyond ten (10) days should be granted, the 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 that such a variance has been granted. 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 Director to show cause why the variance should not be granted should be terminated. 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 Director may issue an order granting terminating such variance. If the Director determines that additional time shall not be granted the Director shall provide prompt notice in writing to the applicant of this determination.

~~13.3.~~ 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 Director pursuant to the provisions of subsection 13.2 of this section, may appeal an order of variance to the Air Quality Board in the same manner as appeals of cease and desist orders under the provisions of W. Va. Code §22-5-5. Any person, whose interest may be affected by the termination of a variance or the denial of a variance in excess of ten (10) days, pursuant to the provisions of subsection 13.2, may appeal such action to the Air Quality Board in the same manner as appeals of cease and desist orders under the provisions of W. Va. Code § 22-5-5.

~~14.~~ §45-5-14. Transfer of Permits.

~~14.1.~~ Any person holding a valid operating permit under this rule may request that the Director transfer the operating permit to another person providing the following conditions are met:

~~14.1.a.~~ The permit holder describes, in writing, the reasons for or circumstances of the transfer, lists all relevant air quality permit numbers and certifies that the facility for to which the permit pertains is in compliance with all air permits issued by the Director and all applicable rules of the Director;

~~14.1.b.~~ The transferee identifies and acknowledges, in writing, that it accepts and will comply with all permit(s) issued by the Director as identified in the notice of transfer filed pursuant to subdivision 14.1.a and that it will comply with all applicable rules; and

~~14.1.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 Air Pollution Control Fund. Such payment satisfies the requirement of subsection 4.2 of 45CSR22.

14.2. Once the permittee and proposed transferee have complied with subsection 14.1, such a transfer shall be deemed approved unless the Director notifies the permittee and proposed transferee in writing, within thirty (30) days, that:

14.2.a. Additional information is required in order to process and act on the transfer; or

14.2.b. Such a transfer is denied, in which event the supporting findings of fact and legal authority for said denial shall be set forth in writing.

14.2.b.1. Any such denial may be appealed in the same manner as an appeal from permit denial under W. Va. Code §22-5-14 and applicable rules.

~~15.~~ §45-5-15. Inconsistency Between Rules.

15.1. In the event of any inconsistency between this rule and any other existing rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

AppendixParticulate Emission Limitations and Operational Monitoring Requirements
Applicable to Thermal Dryers Installed Before October 24, 1974Particulate Emission Limitations

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

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

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

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

1.3. For the volumetric flow rate between any two consecutive volumetric flow rates stated in subsection 1.1. and subsection 1.2. of this Appendix, 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 dryers at one plant location. This value shall be determined by methods which are acceptable to the Director.

1.4. When modifications were made to plants after March 1, 1970 but before October 24, 1974, that resulted in a significant increase in the total gas volume passing through a thermal dryer(s), said dryer(s) will be subject to the emission limitations of subsection 1.2. of this Appendix, even though

such modifications do not include the installation of a new thermal dryer(s).

Monitoring of Operations

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

2.2. For thermal dryers that use venturi scrubber emissions control equipment:

2.2.b.1. 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 (± 1 in.) water gauge.

2.2.b.2. 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 Director.

2.3. All monitoring devices required under subsection 2.2. of this Appendix are to be recalibrated at least once annually.