

FORM #3

Aug 6 3 24 PM '99

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF THE ARMY

Karen G. Watson, Attorney
Authorized Signature

519.90



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone: (304) 759-0515
Fax: (304) 759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

July 29, 1999

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

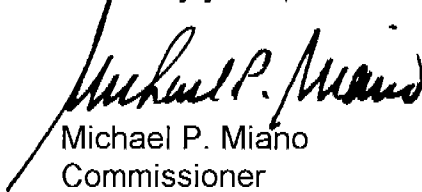
RE: 45CSR5 - "To Prevent and Control Air Pollution From the Operation of
Coal Preparation Plants, Coal Handling Operations and Coal Refuse
Disposal Areas"

Dear Ms. Cooper:

This letter is to give my approval for filing of the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of an Agency-Approved Rule."

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

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp
Karen Watson
Carrie Chambers

Questionnaire

DATE: August 6, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311-2599
Phone: 304-558-4022

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

1. Authorizing statute (s) citation: W. Va. Code §§ 22-5-1 et seq.

2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 16, 1999 and July 14, 1999
 - b. What other notice, including advertising, did you give of the hearing?
 - I. Class I legal advertisement. Charleston Daily Mail and Charleston Gazette
 - II. Sent a copy of the Public Notice to our agency mailing list.
 - III. DEP's "Public Notice Bulletin" (June and July issues)
 - IV. Public Notices placed on agency's Web site:
<http://www.dep.state.wv.us/oaq/>
 - V. Press Release
 - c. Date of Public Hearing (s) or Public Comment Period ended:
Public Hearing -- July 19, 1999
Public Comment Period ended -- July 28, 1999

- Attached X No comments received _____

- August 6, 1999

- Edward L. Kropp, Chief
1558 Washington Street, East
Charleston, WV 25311-2599
Phone: 304-558-4022
Fax: 304-558-3287
E-Mail: skropp@mail.dep.state.wv.us

- See "f" above

- 2

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing or comment period:

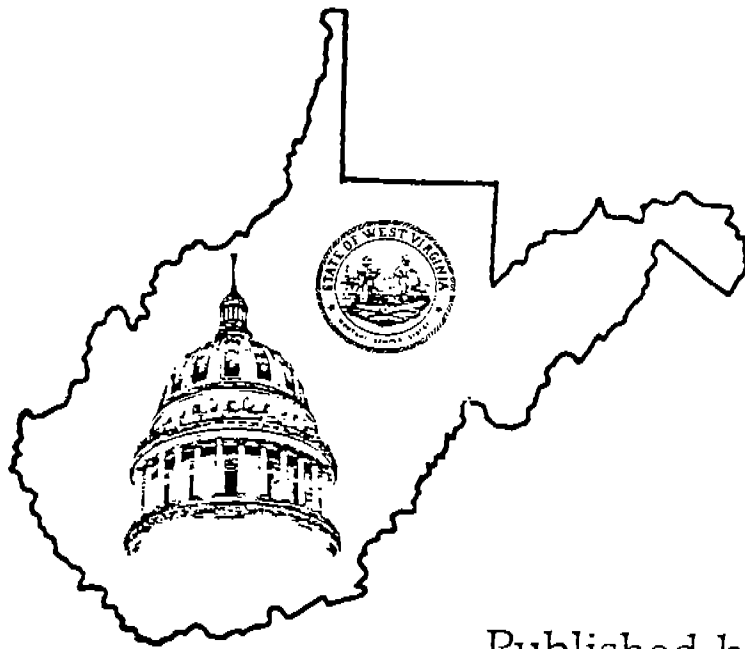
N/A

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

- d. Attach findings and determinations and reasons:

Attached, N/A



WEST VIRGINIA REGISTER

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Volume XVI

Issue 25

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Pages 1026-1084

A Weekly Publication

Administrative Law Division

*Judy Cooper
Director*

*Lisa Blake
Leah Powell
Administrative Assistants*

*Secretary of State
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CONTENTS

I. Chronological Index

II. Open Government Meetings Listing

III. Price List

IV. Rule Monitor

V. Notices

a. Legislative Rules

b. Interpretive Rules

c. Procedural Rules

d. Emergency Rules

e. Legislative Rule-Making Review Committee

VI. Legislative Interims

VII. Orders

IX. Ethics Commission Opinions

X. Attorney General Opinions

XI. Other Documents or Information Filed

XII. Publication Deadlines and Publication Dates

CHRONOLOGICAL INDEX VOLUME XVI ISSUE25

PROPOSED RULES FILED FOR PUBLIC HEARING

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Air Quality (45-2)	To Prevent & Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Office of Air Quality - Conference Rm 1558 Washington Street East Charleston, WV 25311 Written Comments to: Edward L. Kropp, Chief Office of Air Quality 1558 Washington Street East Charleston, WV 25311
Air Quality (45-3)	To Prevent & Control Air Pollution from the Operation of Hot Mix Asphalt Plants Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air which Causes or Contributes to an Objectionable Odor or Odors \$5.40 Legislative	6/16/99	7/19/99						
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas \$7.20 Legislative	6/16/99	7/19/99						
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse \$5.80 Legislative	6/16/99	7/19/99						
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations \$8.00 Legislative	6/16/99	7/19/99						
Air Quality (45-8)	Ambient Air Quality Standards for Sulfur Oxides & Particulate Matter \$2.60 Legislative	6/16/98	7/21/98		7/31/98	Modified & Approved 1/12/99 Filed 1/22/99	HB 2533	6/1/99	8/30/99
Air Quality (45-9)	Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide & Ozone \$2.40 Legislative	6/16/98	7/21/98		7/31/98	Modified & Approved 12/15/98 Filed 1/5/99	HB 2533	6/1/99	8/30/99
Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides \$7.00 Legislative	6/16/99	7/19/99						
Air Quality (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide \$5.20 Legislative	6/16/99	7/19/99						

LEGISLATIVE

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

Do Not Mark In This Box

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: 1

TITLE OF RULE BEING AMENDED: To Prevent and Control the Discharge of Air

Pollutants Into the Open Air Which Contributes to an Objectionable Odor on

Others

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

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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 Opera-

tion 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: 1:00 P.M.

LOCATION OF PUBLIC HEARING: Office of Air Quality - Conference Room

1558 Washington Street, East

Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL WITH ITN BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Edna and L. Kropp, Chief

Office of Air Quality

1558 Washington Street, East

Charleston, WV 25311-2599

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.

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

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

DATE OF PUBLIC HEARING: July 19, 1999 TIME: 1:00 P.M.

LOCATION OF PUBLIC HEARING: Office of Air Quality - Conference Room

1558 Washington Street, East

Charleston, WV 25311

COMMENTS LIMITED TO: ORAL WITH ITN BOTH X

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

Office of Air Quality

1558 Washington Street, East

Charleston, WV 25311

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

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

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

OTHER

NOTICE OF PUBLIC HEARING AND
PUBLIC COMMENT PERIOD

July 3, 1999

On Monday, July 19, 1999 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on proposed revisions to the following legislative rules:

- 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"

Legal Notice
Page 2

- 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"

Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.

Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.

Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan for the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval by the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan for the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34, the Office of Air Quality will seek federal delegation of authority from the U. S. Environmental Protection Agency to implement and enforce the revised standards.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U. S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR23, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.

Upon authorization and promulgation of revisions to 45CSR33, the Office of Air Quality will submit this rule to the U. S. Environmental Protection Agency as part of the State's Acid Program.

OTHER

Legal Notice
Page 3

The hearing will be held in the Office of Air Quality's Conference Room located at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral comments by the public will be accepted until the close of the hearing on July 19th and will be made a part of the rulemaking record. Comments will not be accepted by e-mail. The public may also submit written comments by mail or other delivery to the Office of Air Quality through July 19th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief
Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 18, 1999 at the Office of Air Quality's Charleston office.

NOTICE OF PUBLIC HEARING

On Thursday, July 22, 1999 beginning at 7:00 p.m., the Office of Air Quality of the West Virginia Division of Environmental Protection (WVDEP) will hold a public hearing on proposed revisions to the State Implementation Plan (SIP) to attain and maintain compliance with the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO₂). The proposed plan revisions affect American Electric Power's Kanawha Plant, Columbus Chemical Company, PPG Industries Inc. and Bayer Corporation, all of which are located in Marshall County, West Virginia.

The WVDEP proposes to enter Consent Orders with the aforementioned companies or, if necessary, seek modification to rule 45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides" to establish new sulfur dioxide emission limits or other requirements necessary to assure attainment of the sulfur dioxide NAAQS in Marshall County.

Upon entry of the proposed Consent Orders and/or promulgation of a revised 45CSR10, these documents, in conjunction with supporting documentation and analysis will be submitted to the United States Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act as amended.

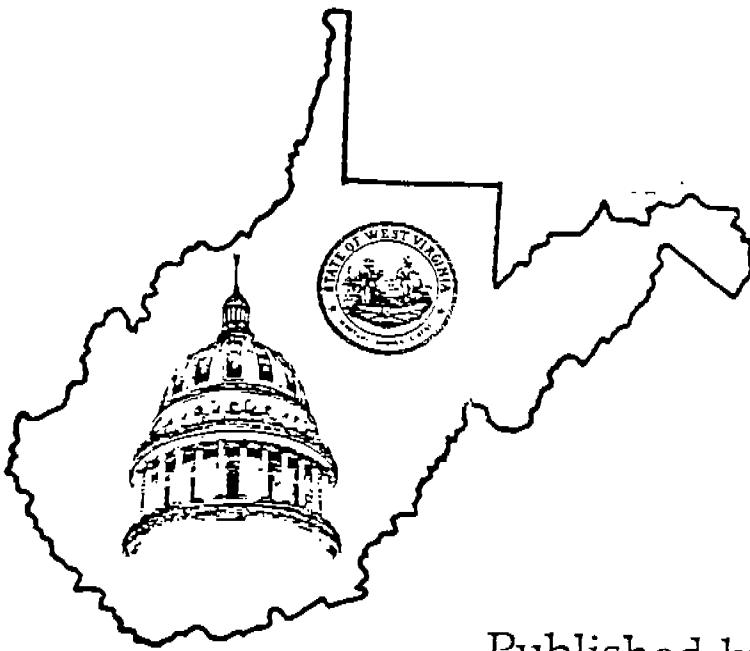
The hearing will be held at the Grave Creek Mound Historical Site located at 801 Jefferson Avenue, Moundsville, WV 26041. Written and oral testimony by all interested parties will be accepted and made part of the record, which will be closed at the conclusion of the public hearing. Submittal of comments by electronic mail will not be accepted.

Persons interested in submitting written comments prior to the hearing should send them to:

Tim J. Carroll, Assistant Chief
Office of Air Quality
Northern Panhandle Regional Office
1911 Warwood Avenue
Wheeling, WV 26061

Copies of the draft Consent Orders and supporting documentation will be available for public review at the following locations on and after June 21, 1999:

Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311



WEST VIRGINIA REGISTER

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CONTENTS

Volume XVI

Issue 29

July 16, 1999

Pages 1242-1296

A Weekly Publication

Administrative Law Division

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Director*

*Lisa Blake
Leah Powell
Administrative Assistants*

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I. Chronological Index

II. Open Government Meetings Listing

III. Price List

IV. Rule Monitor

V. Notices

a. Legislative Rules

b. Interpretive Rules

c. Procedural Rules

d. Emergency Rules

e. Legislative Rule-Making Review Committee

VI. Legislative Interims

VII. Orders

IX. Ethics Commission Opinions

X. Attorney General Opinions

XI. Other Documents or Information Filed

XII. Publication Deadlines and Publication Dates

CHRONOLOGICAL INDEX, VOLUME XVI ISSUE 28

PROPOSED RULES FILED FOR PUBLIC HEARING

AGENCY	RULE/TYPE	AUTHORITY	HEARING/COMMENT PERIOD/LOCATION
Air Quality (45-2)	To Prevent & Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Extension of Written Comments Only: Edward L. Kropp, Chief Ofc of Air Quality 1558 Washington St E Charleston WV 25311-2599
Air Quality (45-3)	To Prevent & Control Air Pollution from the Operation of Hot Mix Asphalt Plants Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC- ACTION	LEGIS	FINAL FILE	EFFECTIVE
Administration (148-7)	State Purchasing Card Program \$3.60 Legislative	7/2/1998	8/3/1998		8/3/1998	Modified & Approved 10/19/1998 Filed 10/29/1998	SB 272	5/18/1999	5/18/1999
Agriculture (61-1)	Animal Disease Control** \$8.40 Legislative	5/14/1998	6/15/1998	5/14/1998 Effective 6/25/1998	6/18/1998	Modified & Approved 7/14/1998 Filed 7/16/1998	SB 269	4/13/1999	4/13/1999
Agriculture (61-7A)	Marketing of Eggs Regulations \$3.20 Legislative	5/10/1999	6/11/1999		6/30/1999				
Air Quality (45-2)	To Prevent & Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers \$10.00 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-3)	To Prevent & Control Air Pollution from the Operation of Hot Mix Asphalt Plants \$5.80 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air which Causes or Contributes to an Objectionable Odor or Odors \$5.40 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas \$7.20 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse \$5.80 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations \$8.00 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						

LEGISLATIVE

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #2

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Jul 28 1999

01

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #2

Do Not Mark In This Box

Jul 28 1999

01

**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 X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: To Prevent and Control the Discharge of Air

Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Order of
Odors"

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 THE PROPOSED RULES. THIS COMMENT
PERIOD WILL END ON July 28, 1999 AT 5:00 PM.

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

Edward L. Krupp, 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. Krupp, Ken H. Hechler

ATTACH A BRIEF SUMMARY OF YOUR COMMENTS

**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 X 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:

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PERIOD WILL END ON July 28, 1999 AT 5:00 PM.

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

Edward L. Krupp, 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. Krupp, Ken H. Hechler

OTHER

NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

The West Virginia Division of Environmental Protection, Office of Air Quality, hereby provides notice of the extension of the public comment period previously established for proposed revisions to the following legislative rules:

- 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"
- 45CSR21 "To Prevent and Control Emissions from Municipal Solid Waste Landfills"

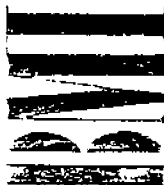
- 45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR31 "Acid Rain Provisions and Permits"
- 45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"
- Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.
- Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.
- Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.
- Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.
- Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34, the Office of Air Quality will seek Federal delegation of authority from the U.S. Environmental Protection Agency to implement and enforce the revised standards.
- Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.
- Upon authorization and promulgation of revisions to 45CSR23, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.
- Upon authorization and promulgation of revisions to 45CSR31, the rule will be submitted to the Environmental Protection Agency as part of the State's Acid Rain Program.

OTHER

The public comment period, previously set to expire at the close of the public hearing on July 19, 1999, will be extended up to and including July 28, 1999, at 5:00 p.m. to permit the receipt of written comments, which will be made a part of the rulemaking record. The public hearing set for July 19, 1999, at 6:00 p.m. will be held as previously noticed. Comments will not be accepted by e-mail. The public may submit written comments by mail or other delivery to the Office of Air Quality through July 28th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief
Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules are available for public review at the Office of Air Quality's Charleston office at the above address.



Stuart Rosen
Senior Attorney

July 13, 1999

BY OVERNIGHT MAIL

Mr. Bill Harrington
Office of the Secretary of State
State Capitol Building
157K
Charleston, West Virginia 25305

Re: West Virginia Statutes, Section 47-2A-3(b)

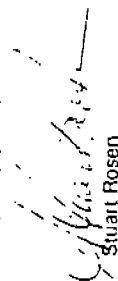
Dear Mr. Harrington:

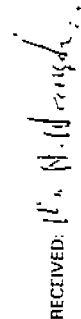
Pursuant to the provisions of the above statute, enclosed is a booklet containing BMI's music licensing agreements and related documents, along with a certification from our corporate secretary, which constitutes our current filing of such materials under the Act. This complete set of agreements should be substituted for the agreements filed last year.

I understand that there is no fee for filing these materials.

If you have any questions or comments about the enclosures, please feel free to contact me. In addition, I would appreciate your acknowledging receipt of this letter by signing and returning an extra copy in the enclosed envelope.

Very truly yours,


Stuart Rosen

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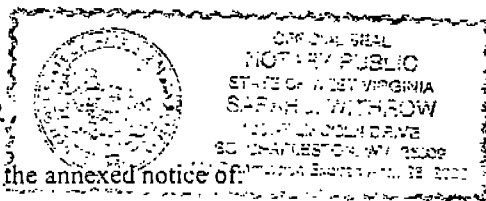
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ISSUE DATE	AD TYPE	PUB	DESCRIPTION REFERENCE NBR PURCHASE ORDER #	AD NUMBER	AD SIZE TOTAL RUN	RATE	GROSS AMOUNT	NET AMOUNT
07/17	LEGF	GZ	COMMENT PERIOD 656084001	L455179	1X1838 18.38	5.83	107. ¹⁶ ₀₇	
07/17	LEGF	DM	COMMENT PERIOD 656084001	L455179	1X1838 18.38	5.83	107. ¹⁶ ₀₇	214. ³² ₁₄
TOTAL INVOICE AMOUNT								³² 214. ₁₄

State of West Virginia.

AFFIDAVIT OF PUBLICATION

I, Sandra Ligg of
THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER,
THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,
published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:
COMMENT PERIOD
was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County.
West Virginia, on the 19TH day of JULY 1999. Published during the following dates: 07/17/99-07/17/99
Subscribed and sworn to before me this 20 day of July
Printers fee \$ 214.14



Notary Public of Kanawha County, West Virginia

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OFFICE OF AIR QUALITY ANNEX

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NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

The West Virginia Division of Environmental Protection, Office of Air Quality, hereby provides notice of the extension of the public comment period previously established for proposed revisions to the following legislative rules:

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 Exchanges"

45CSR3 "To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plant"

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

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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"

Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.

Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.

Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34,

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the Office of Air Quality will seek Federal delegation of authority from the U.S. Environmental Protection Agency to implement and enforce the revised standards.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR23, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.

Upon authorization and promulgation of revisions to 45CSR33, the rule will be submitted to the Environmental Protection Agency as part of the State's Acid Rain Program.

The public comment period, previously set to expire at the close of the public hearing on July 19, 1999, will be extended up to and including July 28, 1999, at 5:00 p.m. to permit the receipt of written comments, which will be made a part of the rulemaking record. The public hearing set for July 19, 1999, at 6:00 p.m. will be held as previously noticed. Comments will not be accepted by e-mail. The public may submit written comments by mail or other delivery to the Office of Air Quality through July 28th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief
Office of Air Quality
1558 Washington St., E.
Charleston, WV 25311-2599

Copies of the proposed legislative rules are available for public review at the Office of Air Quality's Charleston office at the above address.
(15179)

**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: X 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

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

Aug 8 3 25 PM '99
OFFICE OF AIR QUALITY
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]~~

2.1+2. "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.

2.1+3. "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

bonev, 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.

2.1815. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

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.

2.1417. "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%) 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 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%) 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 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 ~~fFrom~~ 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~~	~~Maximum Allowable~~
~~Flow Rate~~	~~Particulate Loading~~
~~(Standard Cubic Feet~~	~~Per Drier (Grains Per~~
~~Per Minute)~~	~~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, 4.1.b, or 4.1.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 driers which commenced construction or modification after October 24, 1974, shall meet emission limitations set forth under 45CSR16.

4.1.b. Thermal driers 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 810 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 4.1.b 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~~ May 1, 1995 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, or within ninety (90) days of the effective date of this rule, whichever comes later.~~

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 9.1 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. 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 ~~1012.1.~~

~~1012.3.~~ 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.

~~1012.4.~~ Tests to determine compliance with the visible emission limitations of ~~S~~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.

~~1012.4.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.

~~1012.56.~~ 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.

~~§45-5-113.~~ Variance.

~~113.1.~~ 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.

~~11~~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.

~~11~~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 11.2 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.

~~§45-5-12~~14. Transfer of Permits.

~~12~~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:

~~12~~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: ;

~~12~~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

~~12~~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 ~~S~~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.

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.

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

ORIGINAL

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 5 "To Prevent and Control Particulate
Air Pollution From The Operation of
Coal Preparation Plants and Coal
Handling Operations"

Transcript of proceedings had at a public
hearing in the above-styled matter for the West Virginia
Division of Environmental Protection, Office of Air
Quality at the Conference Room, 1558 Washington Street,
East, Charleston, West Virginia, 25305, commencing at 6:20
p.m. on the 19th day of July 1999, pursuant to notice.

P R O C E E D I N G S

MS. CHANDLER: Good evening. This public hearing will now come to order on this 19th day of July, 1999 at the West Virginia Division of Environmental Protection, Office of Air Quality's Conference Room located at 1558 Washington Street, East, Charleston, West Virginia.

The purpose of the public hearing is to receive comments on the proposed rules filed in the Secretary of State's Office on June 16, 1999 and noticed in the State Register on June 18, 1999. The proposed legislative rules are 45 CSR 1, 45 CSR 2, 45 CSR 3, 45 CSR 4, 45 CSR 5, 45 CSR 6, 45 CSR 7, 45 CSR 10, 45 CSR 12, 45 CSR 16, 45 CSR 17, 45 CSR 18, 45 CSR 23, 45 CSR 25, 45 CSR 33 and 45 CSR 34. The rules were noticed in a Class I legal advertisement in both The Charleston Daily Mail and The Charleston Gazette, and notice was also sent to various individuals and organizations.

This public hearing is being held pursuant to the provisions of 29A of the West Virginia Code and Section 110 of the Clean Air Act.

My name is Jeanne Chandler of the Public Information Office of the West Virginia Division of Environmental Protection. I will be the moderator for these proceedings.

Section 2.5 Objectionable Odors - This proposed definition underwent a great deal of discussion during the Stakeholder Review Process. The Chamber is supportive of this definition based upon the representation by the agency that this odor regulation would be implemented based upon a combination of factors (investigations, determinations, and complaints). Recognition of the need for a combination of factors gives the definition of "objectionable odors" the depth it needs to avoid abuse by reported complaints that may or may not be inspired by an environmental condition. The Chamber is supportive of a well designed regulatory program that assures the environmental regulations will not be subject to abuse by parties who may wish to use it to advance alternative political objectives.

Section 4.1 Accidental and Other Infrequent Emissions, Reporting - The Chamber had advanced a concern about the need to create an affirmative obligation for the reporting of accidental or other infrequent emissions that was reasonable. The OAQ's proposal both creates the obligation and clarifies that such a report is due upon the reasonable determination by a person that they are responsible for the objectionable odor. The Chamber is supportive of this language and believes its reasonableness standard complements other more stringent reporting obligations that are truly environmentally-based. The Chamber notes a typographical error where the last line of this regulation should read: "reasonably has knowledge of such discharge."

Section 7 Enforcement - This language is written such that it fails to recognize the notification and investigation process described in Section 3 of this rule. The Chamber is supportive of the need for the OAQ to preserve its authority to exercise its enforcement authorities when the emission of air pollution is causing a violation of the WV Air Pollution Control Act. The Stakeholder Review Process invested significant resources in developing this rule. The Chamber presumes the OAQ intended for this language in Section 7 as a reservation of enforcement authority that would be invoked after reasonable efforts to implement Section 3 had failed.

45 CSR 5 - Coal Preparation Plants, Coal Handling, and Coal Refuse

This regulation has been expanded to incorporate the current 45 CSR 1 which regulates coal refuse. In the interest of consolidating the air quality regulations that impact the coal industry, it was proposed that its requirements be combined with 45 CSR 5. The Chamber participated in the efforts to combine these regulations and complements the OAQ's efforts to affect this combination as seamlessly as possible. This modification is consistent with the intent and purpose of the Stakeholder Review Process which was to revise and update.

Sections 3.2 and 3.3 Particulate Emission Limits - The OAQ has proposed revision to the opacity limits by offering the statement, during the Stakeholder Review Process, that these revisions were based upon the need to address the calculation of averaging, as opposed to aggregation. The regulatory impact of these changes was not readily apparent to any of the participants in the Review Process, to include the OAQ. It is the understanding of the Chamber that these revisions were not intended to be submitted, since the Stakeholder participants were so unclear as to the impact of the proposed change. The Chamber urges that the regulation be restored to its original language.

Section 10 Reports and Testing - The Chamber supports the proposed modifications to this section to emphasize the EPA test methods used by most operations. The proposal merely updates and refines the regulation without changing its effect.

Section 11 Variance - The proposed modifications to the administrative process of granting a variance were discussed at length during the Stakeholder Review Process. The intent of the modifications was to provide a well defined process for managing equipment failure. The Chamber supports the OAQ's inclusion of these revisions. The suggested modifications will serve to enhance the smooth administration of the variance process that currently exists. Administrative efficiency is an important factor and the Chamber applauds the agency's efforts to incorporate such changes.

45 CSR 6 - Combustion of Refuse

Section 3.1.c.4 Pre-Approval of Burning - The proposed revisions to Regulation 6 are principally those revisions recommended by the OAQ during the Stakeholder Review Process. Generally, these modifications have been designed to update this regulation. The Chamber is supportive of the proposed changes and further recommends that the agency consider the development of an interpretive rule, or other appropriate administrative tool for implementation, that will provide guidance to the regulated community concerning the new requirement that approval to conduct burning of land clearing debris must be obtained. Consistent with the stated goals of this regulatory review process, clear communication as to what the agency expects of the regulated community will go far to assure smooth implementation of the modified provisions of Section 3.1.c.4.

45 CSR 7 - Particulate Emissions from Manufacturing Processes

The Stakeholder Review Process devoted significant time to exploring the particulate emissions control program as set forth under Regulation 7. This is a complex rule that attempts to regulate a very diverse universe of manufacturing processes. This fact alone seriously complicates any effort to streamline and clarify its intent. The Chamber extends its compliments to the OAQ staff for its efforts during the Stakeholder discussions to explain the agency's needs with regard to this rule. The Chamber recommends for consideration the future need to review the merit of splitting Regulation 7 into several small regulations that are industry category specific. Such a split would significantly simplify the implementation and compliance with this rule.

Section 2.18 Maintenance Operations - The Chamber had proposed consideration by the Stakeholder Workgroup the need to recognize that certain maintenance operations result in emissions of particles that are not clearly defined under Regulation 7. This lack of clarity had resulted in inconsistent interpretation and enforcement. In response to that request, the OAQ has proposed a definition and a well defined exemption for certain maintenance operations that are not adversely impacting air quality under Section 10.3. The Chamber is supportive of these revisions as resulting in clarification of the regulation. These revisions recognize the fact that certain maintenance operations are insignificant and infrequent sources of particles not warranting extensive regulation, but instead warranting management through good engineering practices.

Section 2.39.d Type 'd' Manufacturing Processes - The Chamber had raise concerns over the need to clarify the scope of those manufacturing processes in which material of any origin undergoes a chemical change. In response to those comments, the OAQ has proposed the phrase "and this chemical change results in the emission of particulate matter to the atmosphere." The Chamber supports this change as one that serves to enhance the implementation of and compliance with this rule.

Section 3.7 Emissions from Storage Structures - The revisions to this section were intended by the Stakeholder Workgroup to be clarifying modifications to the requirement to control emissions from storage structures. The Chamber supports this revision as one that serves to streamline the requirement to control emissions from storage structures.

Section 5 - Control of Fugitive Particulate Matter - It was proposed by the Chamber that it would be appropriate to add language to expand the meaning of a fugitive particulate control system to include process equipment design, control equipment design or operation and maintenance procedures. These are important and effective alternatives that warranted recognition in the regulatory program. The OAQ has proposed inclusion of these alternatives confirming these fugitive control measures. The Chamber supports these modifications as enhancements to the meaning of the rule.

Section 10 - Alternative Visible Emission Standards - The Stakeholder Workgroup engaged in extensive discussions over the need to provide a similar process for demonstrating the need for an alternative visible emission standard for start-up and shutdowns as exists for sources of particles that are regulated from boilers. The results of those discussions are found in the proposed new section 10.4. The Chamber supports these recommended changes that create a process by which a manufacturing source operation is afforded the opportunity of demonstrating the need for an alternative standard that is protective of air quality.

Sections 10.5 and 10.6 Deminimus Sources of Particles - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of particles and mineral acids. Inclusion of these new sections is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 11 - Alternative Emission Limits for Duplicate Source Operations - The OAQ has proposed a section to address duplicate source operations that elect to petition for an alternative emission limit in response comments raised in the Stakeholder Review Process. It was recognized by the Stakeholder Review Workgroup that the issues surrounding the state "duplicate source" rule are very complex. The Chamber supports inclusion of this section that serves to create a review process for alternative emission limits for duplicate source operations. This provides an alternative to litigation which enhances regulatory efficiency.

The Chamber advocated for the removal of the "duplicate source" provisions as an archaic regulatory tool that has long since been rendered obsolete by the Clean Air Act Amendments and specifically by the NSR program. It is recommended that future modifications to Regulation 7 should focus on the need to eliminate these requirements.

45 CSR 10 - Sulfur Oxides

Section 3.4.b. Individual Allowable Stack Emission Rates - The Chamber supports the OAQ's inclusion of provisions that would allow the agency to address those facilities with individual stack allowable emission rates differing from those calculated under the rule, based upon compliance with the criteria set forth in 3.4.b.1 through 3.4.b.6. This rule revision is evidence of the agency's interest in working with the regulated community to assure an implementable program that results in protection of air quality.

Section 4.1.e Deminimus Operations - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of sulfur oxides. Inclusion of this new section is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 10, the Chamber supports the regulatory revisions.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

Section 10.3 Exemptions - The Chamber supports the proposed exemption from the testing, monitoring, recordkeeping and reporting requirements for those operations that are known not to emit levels of sulfur oxides to warrant such requirements. These proposed modifications are clearly intended to streamline the regulation and provide for an appropriate level of regulation commensurate with the environmental impact.

45 CSR 17 - Fugitive Particulate Matter

The proposed revisions to Regulation 17 were presented to the Stakeholder Review Workgroup by the OAQ. The OAQ expressed the need to have a regulatory tool that could be used to require management of fugitive emissions from sources that were not otherwise subject to the OAQ regulatory program. In recognition of that expressed need, it was agreed by the Stakeholder Workgroup that Regulation 17 should be significantly expanded. The

Chamber is supportive of these proposed changes that create a process by which sources would be contacted by the agency and efforts expended to develop a reasonable emissions control or suppression program.

45 CSR 18 - Meat Firing

The Stakeholder Workgoup discussed the history of the promulgation of the meat-firing regulation and concluded that this regulation was no longer warranted, based upon the fact that its provisions had not recently been invoked, implemented, or useful in an manner to the public, the agency or the potential regulated community. The Chamber supports the elimination of this regulation as clearly within the scope of updating the OAQ program.

Additional modifications have been proposed by the Office of Air Quality for the following regulations to make necessary and appropriate cross-references to the federal program. The Chamber is supportive of these modifications.

45 CSR 16 - New Source Performance Standards

45 CSR 23 - Municipal Solid Waste Landfills

45 CSR 25 - Hazardous Waste Treatment, Storage, or Disposal Facilities

45 CSR 33 - Acid Rain

45 CSR 34 - Hazardous Air Pollutants

In conclusion, the Chamber provided an oral statement at the hearing of July 19, 1999. In that statement the Chamber urged that a thorough Response to Comments be provided by the OAQ concerning the proposed rulemaking package that will explain the intent of the modifications as was agreed during the Stakeholder Review Process. This will serve to memorialize the changes that will be made to the regulations and provide guidance concerning the implementation of these changes.

Respectfully, submitted this 27th of July, 1999.


Kathy G. Beckett
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of Commerce
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FAX TRANSMISSION

US EPA - REGION III

RUTH KNAPP

1650 ARCH STREET
PHILADELPHIA, PA 19103

(215) 814-2191

FAX: (215) 814-2114/2101

To: Mr. Edward Kropp **Date:** July 27, 1999
Phone: 304-558-0885
Fax #: 304-558-1222 **Pages:** 11, including fax
From: Ruth Knapp cover sheet

Comments:

Attached are Comments on West Virginia
Proposed Revisions.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Mr. Edward L. Kropp, Chief
Office of Air Quality
West Virginia Department of Environmental Protection
1558 Washington Street, East
Charleston, West Virginia 25311

July 27, 1999

Dear Mr. Kropp:

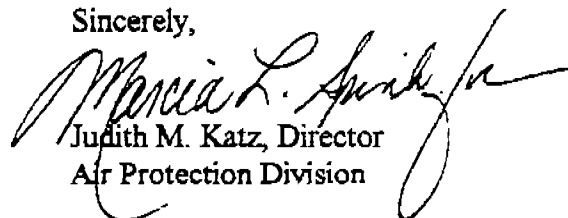
Thank you for granting the extended opportunity to comment on the proposed revisions to the following regulations: 45CSR2, 45CSR3, 45CSR5, 45CSR6 and 45CSR7 to prevent and control particulate matter pollution. Our comments are outlined in an enclosure to this letter.

EPA has serious concerns regarding the use of "Director discretion" language contained in these revisions. In many instances the regulations provide for the Director to approve alternatives to such things as specified stack test methods or monitoring methods to determine opacity. Such language for "Director discretion" is not approvable for regulations to be included in a State Implementation Plan (SIP). You could render these regulations approvable as SIP revisions by adding language which indicates that the Director would only approve alternatives which have also been federally approved. For regulations being adopted for purposes of taking delegation of New Source Performance Standards or Maximum Achievable Control Technology, it is important to note that currently States may not be delegated the authority to approve alternatives to items such as stack test methods.

Our second major concern is the language which provides automatic exemptions to sources from enforcement action. EPA is currently reviewing its policy on excess emissions. A copy of EPA's current policy statement on this issue is enclosed.

Please include this letter and the enclosed comments in the public record on the proposed rule revisions. Ruth Knapp of my staff has been assigned to this project. She may be reached at (215) 814-2191. If you have any questions, please contact Ruth Knapp or Walter Wilkie, Acting Chief, Technical Assessment Branch at (215) 814-2150.

Sincerely,


Judith M. Katz, Director
Air Protection Division

Enclosures

cc: John Benedict

Comments on West Virginia Proposed Revisions

General Comments

- 1.. The proposed revisions to 45CSR5 appear to contain additional revisions to the regulation which have not been submitted for inclusion into the State Implementation Plan (SIP).
2. EPA is currently reviewing its policy on excess emissions and start-ups, shut-downs, maintenance and malfunctions. Enclosed, please find EPA's current official policy statement on this issue as described in the memorandum entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" (February 15, 1983). Generally excess emissions during these periods should be handled with enforcement discretion and not automatically exempted from enforcement action. EPA has tried to identify major provisions that may be effected by this policy and any possible revisions to this policy. However, additional provisions in these proposed regulations could also be effected.

Comments on Proposed Changes to WV Regulation 45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"

45-2-2 Definitions

1. Section 2.14 states in part "This term does not include process heaters as defined in subsection 2.27." Process Heaters are defined in subsection 2.26 not subsection 2.27.

45-2-8 Testing, Monitoring, Recordkeeping and Reporting

1. Section 8.1.a and 8.1.b allow the Director to approve equivalent test methods for determining compliance with opacity and mass emission limits. These provisions provide very broad Director's discretion. Although, States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test methods used to determine compliance with opacity or mass limits must be federally approved.
2. Section 8.2.a states that "such monitoring plan shall include, but not be limited to, one or more of the following: continuous measurement of emissions, monitoring of emission control equipment, periodic parametric monitoring, or such other monitoring as required by the Director." This provision appears to indicate that the Director could approve a monitoring plan which did not contain any of the following: monitoring of continuous emissions, monitoring emission control equipment, and parametric monitoring. A clarification should be provided to indicate if this is the intent of the provision, or if the intent was to allow the Director to require monitoring in addition to those types already identified.

3. Section 8.2 a.3 states that "Excursions outside the range of the control equipment or operational parameters . . . will not necessarily constitute a violation of this rule." This provision implies that excess emissions will not necessarily constitute a violation of the SIP. EPA is currently reviewing the policy regarding excess emissions particularly as they relate to startup, shutdown, maintenance, and malfunction and affirmative defense. This provision appears to remove enforcement discretion and would not be acceptable to EPA.

4. Section 8.5 indicates that the Director may revise testing, monitoring, reporting and recordkeeping instructions pertaining to this rule. The term "instructions" is not defined in the rule. This provision provides for very broad Director's discretion. A State may approve minor changes to testing, monitoring, reporting and recordkeeping requirements of this rule. However a State may not solely approve significant changes to these portions of the rule. Significant changes to testing, monitoring, reporting and record keeping must be federally approved.

45-2-9 Start-ups, Shut-downs and Malfunctions

1. Section 9.3 makes provisions for reporting malfunctions. See **General Comments #3**. Based on the language in the proposed regulation, this portion of the rule would not be acceptable to EPA.

Comments on Proposed Revisions to WV 45CSR3 - To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants

45-3-2 Definitions

1. The definition of malfunction differs slightly from the definition in 45CSR2. If West Virginia wishes to be consistent, the state could add the phrase "upset condition" as used in 45CSR2.

45-3-3 Emissions of Smoke and/or Particulate Matter Prohibited and Standards of Measurement - Visible

1. Section 3.1 and 3.2 allow the Director to approve equivalent methods for determining opacity. Although States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test methods used to determine compliance with opacity or mass limits must be federally approved.

45-3-5 Permits

1. Section 5.3 indicates that permit applicants must demonstrate that they "will not cause or contribute to the violation of applicable ambient air quality standards." This section does not contain specific information about how a source would demonstrate that they would not "cause or

contribute to the violation . . .” The air quality analyses required can sometimes be complex as is the case with some air modeling analyses. It might be helpful to specify the process and/or guidance that would be used by an applicant to make such a demonstration.

45-3-6 Reports and Testing

1. Section 6.1 allows the Director to approve equivalent methods for conducting stack tests instead of using the test in 40 CFR Part 60 Appendix A Method 5. Although, States may approve minor modifications to test procedures, alternative methods for determining compliance cannot be approved solely by the State. Any alternative test methods used to determine compliance with mass emission limits must be federally approved.

Comments on Proposed Revisions to 45CSR5 “To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas.”

45-5-2 Definitions

1. Section 2.15 indicates that the Director may approve any method which is a standardized method for the measurement of opacity. Any method used to determine opacity must be federally approved.

Comments on Proposed Revisions to 45CSR6 “To Prevent and Control Air Pollution from Combustion of Refuse”

45-6-7 Reports and Testing

1. Section 7.1 indicates that the Director may approve alternative stack test methods. Although, States may make minor modifications to test procedures, alternative methods for determining compliance cannot be approved solely by the State. Therefore, any alternative stack test methods used to determine compliance with mass limits must be federally approved.

Comments on 45CSR7 To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations

45-7-10 Exemptions.

1. Section 10.3 exempts maintenance operations from Section 4 (emission limits) if the owner conducts operations in a manner consistent with good air pollution control practices for minimizing emissions. See **General Comment #3**. The current language is not acceptable to

EPA.

2. Section 10.4 allows an owner or operator to apply for alternative visible emission standards for periods of start-up and shut-down. EPA is currently reviewing its policy on excess emissions and start-ups, shut-downs, maintenance and malfunctions. Although this provision does not allow for automatic alternative standards, these provisions could be effected by EPA's policy review.

3. Section 10.5 allows exemptions for small sources from the emission limits of Section 4.1. West Virginia should clarify what source's and/or source types would be effected and demonstrate that this revision would not cause or contribute to violations of ambient air quality standards or increments.

4. Section 10.6 allows the Director to approve exemptions to Subsection 4.2 for sources of emissions that can demonstrate on a case-by-case basis that their emissions are insignificant. West Virginia should clarify what source types this exemption might be applied to and the purpose of providing these exemptions. In addition, the process by which a source obtains an exemption should be included in the provision along with the type of demonstration that would be required to obtain such an exemption.

45-4-11 Alternative Emission Limits for Duplicate Source Operations

1. Section 11.3 indicates that "approval of alternative allowable emission rates...shall be embodied in a permit issued as an existing stationary source operating permit in accordance with 45CSR13." Any alternative allowable emission rate provided under section 11 of 45CSR7 must be embodied in a federally enforceable permit, and during the permit process, the State must notify EPA that a source is using this process to obtain an alternative limit. If this mechanism does not employ a federally enforceable permit, then a public hearing must be held and the alternative emission limit must be submitted as a revision to the SIP.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 15 1983

OFFICE OF
AIR, NOISE AND RADIATION

MEMORANDUM

SUBJECT: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions
Kathleen M. Bennett
FROM: Kathleen M. Bennett, Assistant Administrator
for Air, Noise and Radiation
TO: Regional Administrators, Regions I-X

I have been asked to clarify my memorandum of September 28, 1982, concerning policy on excess emissions during startup and shutdown.

Specifically, I stated that "startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedure for the process and control equipment. Accordingly, it is reasonable to expect that careful planning will eliminate violations of emission limitations during such periods." I further stated that "[i]f excess emissions occur during routine startup and shutdown of such equipment, they will be considered as having resulted from a malfunction only if the source can demonstrate that such emissions were actually caused by a sudden and unforeseeable breakdown in the equipment."

A question has been posed as to whether there can be situations in which it is unreasonable to expect that careful planning can eliminate violations of emission limitations during startup and shutdown. I believe that there can be such situations. One such situation, which was already mentioned in the policy, is a malfunction occurring during these periods. A malfunction during startup or shutdown is to be handled as any other malfunction in accordance with the policy as presently written.

Another situation is one in which careful and prudent planning and design will not totally eliminate infrequent short periods of excesses during startup and shutdown. An example of this situation would be a source that starts up or shuts down once or twice a year and during that period there are a few hours when the temperature of the effluent gas is too low to prevent harmful

2

ormation of chemicals which would cause severe damage to control equipment if the effluent were allowed to pass through the control equipment.

Therefore, during this latter situation, if effluent gases are bypassed which cause an emission limitation to be exceeded, this excess need not be treated as a violation⁽¹⁾ if the source can show that the excesses could not have been prevented through careful and prudent planning and design and that bypassing was unavoidable to prevent loss of life, personal injury, or severe property damage.

I have clarified the policy concerning this issue. A copy is attached.

Attachment

Attachment

POLICY ON EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, MAINTENANCE, AND MALFUNCTIONS

Introduction

Several of the existing State implementation plans (SIPs) provide for an automatic emission limitation exemption during periods of excess emission due to startup, shutdown, maintenance, or malfunction.* Generally, EPA agrees that the imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner and/or operator is not appropriate. However, any activity which can be foreseen and avoided, or planned, is not within the definition of a sudden and unavoidable breakdown. Since the SIPs must provide for attainment and maintenance of the national ambient air quality standards, SIP provisions on malfunctions must be narrowly drawn. SIPs may, of course, omit any provisions on malfunctions. [For more specific guidance on malfunction provisions for RACT SIPs, see the April 1978 workshop manual for preparing nonattainment plans].

I. EXCESS EMISSION FROM MALFUNCTIONS

A. AUTOMATIC EXEMPTION APPROACH

If a SIP contains a malfunction provision, it cannot be the type that provides for automatic exemption where a malfunction is alleged by a source. Automatic exemptions might aggravate air quality so as not to provide for attainment of the ambient air quality standards. Additional grounds for disapproving a SIP that includes the automatic exemption approach are discussed in more detail at 42 FR 58171 (November 8, 1977) and 42 FR 21372 (April 27, 1977). As a result, EPA cannot approve any SIP revisions that provides automatic exemptions for malfunctions.

* The term "excess emission" means an air emission rate which exceeds any applicable emission limitation, and "malfunction" means a sudden and unavoidable breakdown of process or control equipment.

B. ENFORCEMENT DISCRETION APPROACH--SIP EMISSION LIMITATION ADEQUATE TO ATTAIN AMBIENT STANDARDS

EPA can approve SIP revisions which incorporate the "enforcement discretion approach". Such an approach can require the source to demonstrate to the appropriate State agency that the excess emissions, though constituting a violation, were due to an unavoidable malfunction. Any malfunction provision must provide for the commencement of a proceeding to notify the source of its violation and to determine whether enforcement action should be undertaken for any period of excess emissions. In determining whether an enforcement action is appropriate, satisfaction of the following criteria should be considered.

1. To the maximum extent practicable the air pollution control equipment, process equipment, or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;
2. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;
3. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;
4. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and
5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

II. EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, AND MAINTENANCE

Any activity or event which can be foreseen and avoided, or planned, falls outside of the definition of sudden and unavoidable breakdown of equipment. For example, a sudden breakdown which could have been avoided by better operation and maintenance practice is not a malfunction. In such cases, the control agency must enforce for violations of the emission limitation. Other such common events are startup and shutdown of equipment, and scheduled maintenance.

Excess Emission approach?
3

Startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning and design will eliminate violations of emission limitations during such periods. However, for a few sources there may exist infrequent short periods of excess emissions during startup and shutdown which cannot be avoided. Excess emissions during these infrequent short periods need not be treated as violations providing that the source adequately shows that the excess could not have been prevented through careful planning and design and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage.

If excess emissions occur during routine startup and shutdown due to a malfunction, then those instances will be treated as other malfunctions which are subject to the malfunction provisions of this policy. (Reference Part I above).

Similarly, scheduled maintenance is a predictable event which can be scheduled at the discretion of the operator, and which can, therefore, be made to coincide with maintenance on production equipment, or other source shutdowns. Consequently, excess emissions during periods of scheduled maintenance should be treated as a violation unless a source can demonstrate that such emissions could have been avoided through better scheduling for maintenance or through better operation and maintenance practices.

not

*** ACTIVITY REPORT ***

RECEPTION OK

TX/RX NO. 8626

CONNECTION TEL 215 814 2124

CONNECTION ID

START TIME 07/27 15:33

USAGE TIME 04'25

PAGES 11

RESULT OK

**Public Hearing Statement of
Kathy G. Beckett
On Behalf of the West Virginia Chamber of Commerce
July 19, 1999**

My name is Kathy G. Beckett, an attorney with the law firm of Jackson & Kelly PLLC. I am offering the following statement on behalf of the West Virginia Chamber of Commerce ("the Chamber") concerning the rulemaking package presented for comment by the Office of Air Quality addressing 45 CSR 1, 2, 3, 4, 5, 6, 7, 10, 12, 16, 17, 18, 23, 25, 33, and 34. Although the Chamber will be filing more detailed written comments concerning each of these rules by the filing deadline of July 28, 1999, it would like to offer the following general comments on this rulemaking package.

The Office of Air Quality ("OAQ") held a public meeting in Flatwoods, WV on November 17, 1998, where it announced its goal of updating and "harmonizing" OAQ's existing rules in time for submittal to the 2000 Legislature. It was announced that all rules were open for discussion and review. With that announcement began a rigorous schedule of meetings to begin the process of collecting comments and ideas about the need to update and streamline the state's air quality regulatory program. For those of you who attended the meetings, I do not have to tell you about the tireless commitment of time the OAQ staff devoted to managing the review process. Additional support from the stakeholder participants combined to create a very rich experience.

The Chamber is a strong supporter of the stakeholder review process. The model where a state administrative agency invites the public to engage in an honest, thoughtful, open and informal exchange of interests and ideas with the goal of proposing public policy is an excellent one. Those who attended and participated in the meetings that have taken place over the past several months were presented with an opportunity to inquire as to the

purpose of various provisions, question one another's needs, suggest solutions to issues, and propose language, all of which were presented to the Chief for his consideration." The more varied the vantage points of those engaged in the discussion the more creative the answer became. The Chamber applauds this process and encourages the agency and the public to look for other opportunities to engage in such an exercise.

As will be identified in the written comments filed on behalf of the Chamber, there is a very delicate balance that is created in the spirit of compromise. Some of the proposed modifications that were the subject of the review process represent concepts that meet the specific needs and concerns of certain stakeholders. Recognition of the needs of all stakeholders and balancing those needs against one another ^{and the law} is what the development of public policy is about. Great efforts were made during the discussions to blend the needs of the group into the recommended changes. The Chamber recommends that the OAQ to develop a thorough Response to Comments, as a means of recording the intent of the modifications that have been made.

What made this process work is the stated goal of streamlining and updating the program. Where appropriate, the OAQ has proposed incorporation of the updated federal air program. The OAQ has also proposed removal of provisions that are no longer useful. Although this package certainly represents progress, there remain antiquated regulatory concepts that we would all be well served to review again. Tossing away items from our past can be difficult, but the result could be a fresh, new, and efficient regulatory program.

Tonight the Chamber is participating in the next phase of the public review process by providing oral comments on the proposed regulatory changes that have been inspired, in part, by the recommendations of the stakeholders. The Chamber supports the stakeholder process and supports this rulemaking package.

45CSR5

TO PREVENT AND CONTROL AIR POLLUTION FROM COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS

AND

45CSR1

TO PREVENT AND CONTROL AIR POLLUTION FROM COAL REFUSE AREAS

RESPONSE TO COMMENTS

On July 19, 1999 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR5 "To Prevent and Control Air Pollution from Coal Preparation Plants, Coal Handling Operation and Coal Refuse Disposal Areas". Written comments were accepted through 5 pm on Wednesday July 28, 1999. The changes proposed by the OAQ will combine the requirements of 45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Areas" with this rule. 45CSR1 will be repealed. There was one oral and one written comment specific to 45CSR1. There was one oral and six written comments specific to 45CSR5. In addition, two persons commented at the public hearing concerning all of the OAQ's proposed rules. Both commenters were generally supportive of the proposed rules and the stakeholder process that was utilized by the OAQ to generate the proposed rules. One comment was received from the United States Environmental Protection Agency, Region III, requesting that the public comment period be extended. The OAQ responded to this comment by extending the comment period from July 19, 1999, to July 28, 1999. The OAQ has summarized these comments and provides the following response.

I. Commenter: Tom Jarrell (Comments apply equally to 45CSR1 and 45CSR5)

COMMENT A. *(Oral Comment on July 19, 1999) The commenter expressed concern that the consolidation of 45CSR1 with 45CSR5 would dilute and/or eliminate the requirements of 45CSR1 and questioned if the consolidation would also mean that the West Virginia Air Pollution Commission will be consolidated into the Office of Air Quality. The commenter questioned if the requirements of 45CSR1 had been incorporated into the General Permit for Coal Preparation Plants.*

RESPONSE A. All of the enforceable requirements of 45CSR1 have been incorporated into 45CSR5 and no loss of enforceability will occur as a result. The Air Pollution Control Commission (APCC) was dissolved in 1994 with the formation of the West Virginia Bureau of the Environment, Division of Environmental Protection (WV-DEP). Within the WV-DEP, the Office of Air Quality assumed responsibility for all of the rules and regulations of the dissolved APCC. 45CSR1 has not been updated since 1965 and thus still contains the archaic APCC designation. 45CSR5 having been updated contains the current

Office of Air Quality designation. The General Permit for Coal Preparation Plants contains none of the requirements of 45CSR1, thus this change will have no effect.

COMMENT B. *(Comment #1 - Written Comments of July 26, 1999) The commenter questions the effect of combining 45CSR1 and 45CSR5 on the offices of the Air Pollution Control Commission and the Office of Air Quality.*

RESPONSE B. See "Response A"

COMMENT C. *(Comment #2 - Written Comments of July 26, 1999) The commenter questioned if one effect of combining 45CSR1 and 45CSR5 would cause the operation of a Coal Preparation Plant and a Coal Handling Operation to be considered one facility or separate facilities.*

RESPONSE C. There will be no loss of enforceability of any of the individual requirements by combining these rules. The rules will be enforceable whether or not a preparation plant and a coal handling facility are considered one or separate facilities. Whether they are considered one or separate facilities depends on whether or not they are on contiguous property. The rules may be enforced against the owner or the operator or both.

COMMENT D. *(Comment # 3 - Written Comments of July 26, 1999) In reference to "Comment C", above, the commenter questions if Coal Refuse Areas or Piles would be considered part of the facility no matter how far away they might be from a Coal Handling Facility or a Coal Preparation Plant for the control of fugitive dust matter.*

RESPONSE D. A coal refuse area on contiguous property with a coal preparation plant will be considered one facility. If on separate parcels of land they will be considered separate facilities. In either case all the requirements of the combined rule will be enforceable.

COMMENT E. *(Comment #4 - Written Comments of July 26, 1999) The commenter is concerned that the effect of combining 45CSR1 and 45CSR5 will make it possible or easier to commence using an inactive or discontinued coal refuse site*

RESPONSE E. The combining of these rules has no effect on a company's ability to commence using an inactive refuse site. The current rules nor the combined version contain any provisions that prohibit the start-up of these sites.

COMMENT F. *(Comment #5 - Written Comments of July 26, 1999) The commenter questions if the combined 45CSR5 will be incorporated into the General Permit G-10-A or stand alone as an R-5 Permit.*

RESPONSE F. General Permit G-10-A (now designated G-10-B) does not include coal refuse piles under its coverage and the OAQ has no intention of expanding the General Permit to include such facilities. We note that none of OAQ's rules currently require a permit for coal refuse piles and the consolidation of Rules 1 and 5 will not change this fact.

II. Commenter: CONSOL

COMMENT A. Opacity exemptions
The provisions of subsections 3.2 and 3.3 - opacity exemptions, were revised to allow for averaging of the exemption period with a corresponding reduction in the allowable opacity from 60% to 40%. These proposed changes were discussed at the last stakeholder meeting and it was acknowledged at that time that retention of the existing language in these provisions was acceptable to all participants. The commenter believes that the proposed changes to these provisions were kept in the proposed rule draft as a result of an oversight or clerical error. The commenter requested that the agency restore the original language.

RESPONSE A. The OAQ agrees that the proposed changes were left in the proposed rule as an oversight. A correction will be made by retaining the original language in 45CSR5, subsections 3.2 and 3.3.

COMMENT B. Operating permit requirements
Specific Comment #1
Commenter expressed concern with language in subsection 11.2 which as proposed requires that any preparation plant which was in existence as of May 1, 1995 shall have filed a completed permit application by August 1, 1995. The commenter also noted that the proposed change to subsection 11.2 was discussed at the last meeting of the PM/SO₂ Subgroup and it was agreed that the language requiring submission of application within 90 days following the effective date would be inserted instead of specific dates.

Specific Comment #2
The commenter also expressed concern that the effect of the proposed version of subsection 11.3 is to require the filing of an application for a new or modified Regulation 5 operating permit within 60 days after issuance of a Regulation 13 permit permitting construction, modification or relocation of a coal preparation plant.

RESPONSE B-1. The proposed revision to subsection 11.2 does not impose any new requirement on any facility, the proposed language simply replaces references to the current rule's effective date with the actual dates.

OAQ records indicate that the retention of the "effective date" language, rather than specific dates was discussed in the last meeting of the PM/SO₂ Subgroup in relation to subsection 11.3, not subsection 11.2 as the commenter contends.

RESPONSE B-2. The OAQ recognizes that the agency has not fully implemented the Regulation 5 operating permit program, and companies may not be fully aware that they are obligated to file either new or amended Regulation 5 operating permit applications. Therefore, the OAQ will revise subsection 11.3 to reflect the effective date of the requirement to submit an application for an operating permit by replacing the language "after the effective date...." with "...after May 1, 1995". Recognizing the incomplete implementation of the program, the OAQ will also provide a grace period for those who may not have submitted an application pursuant to this requirement by including the language "or within ninety (90) days after the effective of this rule, whichever comes later".

III. Commenter: US EPA

COMMENT A. SIP issue
The proposed revisions to 45CSR5 appear to contain additional revisions to the regulation which have not been submitted for inclusion into the State Implementation Plan (SIP).

RESPONSE A. EPA is correct, the version of 45CSR5 which recently received SIP approval was promulgated in the 1993 legislative session. The version that the stakeholder group worked from was promulgated in the 1995 legislative session and differs from the 1993 version. The 1995 version has not received SIP approval.

COMMENT B. Definition of opacity, subsection 2.15
Section 2.15 indicates that the Director may approve any method which is a standardized method for the measurement of opacity. Any method used to determine opacity must be federally approved.

RESPONSE B. OAQ recognizes EPA's policy and guidance on Director's discretion and notes that during the stakeholder process it was decided to make definitions consistent throughout all OAQ rules. The language beginning with "as determined by any chart....." through ".....by the Director" was added during stakeholder discussions of Rule 5. However, in later discussions concerning

consistency in the rules it was decided that this language should be removed from the definition of “opacity” in all rules. This language was inadvertently left in Rule 5. Consistency will be attained by removing the indicated language.

IV. Commenter: WV Chamber of Commerce

COMMENT A. Opacity exemptions

The provisions of subsections 3.2 and 3.3 - opacity exemptions, were revised to allow for averaging of the exemption period with a corresponding reduction in the allowable opacity from 60% to 40%. These proposed changes were discussed at the last stakeholder meeting and it was acknowledged at that time that retention of the existing language in these provisions was acceptable to all participants. The commenter believes that the proposed changes to these provisions were kept in the proposed rule draft as a result of an oversight or clerical error. The commenter requested that the agency restore the original language..

RESPONSE A. The OAQ agrees that the proposed changes were left in the proposed rule as an oversight. A correction will be made by retaining the original language in 45CSR5, sections 3.2 and 3.3.

COMMENT B. Sections 10 and 11

The commenter expressed support for the stakeholder process and proposed revisions to 45CSR5 in the spirit of compromise.

RESPONSE B. No response required.

V. Commenter: Conni Gratop Lewis

COMMENT A. *The commenter expressed concern about the lack of deadlines throughout the proposed rules. The commenter believes the rules would be strengthened if such language was included in the rules where appropriate.*

RESPONSE A. The OAQ believes that deadlines are established in 45CSR5 are appropriate and sufficient.

COMMENT B. *The commenter expressed support for the stakeholder process and 45CSR5 as proposed.*

RESPONSE B. No response required.

VI. Commenter: American Electric Power

COMMENT A. Definition of opacity, subsection 2.15

Commenter noted that the definition of opacity should be modified to make it consistent with the definition in 45CSR2.

RESPONSE A. The OAQ concurs and will make the change.

COMMENT B. Opacity exemptions

The provisions of subsections 3.2 and 3.3 - opacity exemptions, were revised to allow for averaging of the exemption period with a corresponding reduction in the allowable opacity from 60% to 40%. These proposed changes were discussed at the last stakeholder meeting and it was acknowledged at that time that retention of the existing language in these provisions was acceptable to all participants.

RESPONSE B. The OAQ notes that the proposed changes were left in the proposed rule as an oversight. A correction will be made by retaining the original language in 45CSR5, sections 3.2 and 3.3.

COMMENT C. Subsection 9.2

Commenter believes that the reference in subsection 9.2 should be to subdivision 4.1.b, not subsection 4.2 as noted.

RESPONSE C. The OAQ concurs and will make the correction.

1 In order to obtain separate transcripts for each of
2 the rules, the hearing procedure this evening will be to
3 introduce each rule individually, allow time for oral
4 comment and close the hearing for that particular rule.
5 Written comments for any rule may be submitted at the end
6 of this public hearing tonight. For those of you wishing
7 to make oral comments, a sign-up sheet was provided and
8 sign up now if you haven't already done so. Please limit
9 your comments to five minutes. The comment period has
10 been extended until July 28th until 5:00 p.m. Written
11 comments may be sent to the attention of Edward L. Kropp,
12 Chief, Office of Air Quality, 1558 Washington Street,
13 East, Charleston, 25311. Comments will not be accepted by
14 e-mail. Your comments will be made a part of the rule-
15 making record.

16 The court reporter is Ms. Paula J. Moore. She's with
17 Q & A Court Reporters, Incorporated. If anyone desires a
18 transcript of this proceeding, please contact Ms. Moore at
19 937-2555.

20 The purpose of this public hearing is to accept
21 comment on 45 CSR 5, "To Prevent and Control Particulate
22 Air Pollution From the Operation of Coal Preparation
23 Plants and Coal Handling Operations," effective date May
24 1, 1995. The purpose of 45 CSR 5 is to establish

1 particulate matter weight and visible emission standards
2 for coal preparation and coal handling operations in West
3 Virginia. The rule also establishes monitoring, record
4 keeping and reporting requirements and requires that each
5 owner/operator obtain an annual operating permit from the
6 Office of Air Quality without which the plant cannot be
7 operated.

8 The revisions contained herein are intended to
9 streamline the requirements of the rule and to incorporate
10 the requirements of 45 CSR 1 for coal refuse sites. 45
11 CSR 1 is to be repealed. These changes will bring all of
12 the Office of Air Quality coal-related rules into one
13 rule. The title of 45 CSR 5 is being changed to reflect
14 this revision and will read, "To Prevent and Control Air
15 Pollution from the Operation of Coal Preparation Plants,
16 Coal Handling Operations and Coal Refuse Disposal Areas."
17 Revisions change opacity limits and methods of
18 determination for certain operational exception periods.
19 Other revisions are intended to harmonize this rule with
20 other rules of the Office of Air Quality and to reference
21 the "General Permit" for coal preparation plants and
22 handling facilities.

23 The revisions which incorporate the requirements of
24 45 CSR 1 will establish standards for coal refuse disposal

1 areas. 45 CSR 5 is part of the West Virginia State
2 Implementation Plan approved by the U.S. EPA to assure
3 attainment and maintenance of attainment with the
4 National Ambient Air Quality Standards for particulate
5 matter. The revisions proposed herein were initiated by
6 the Office of Air Quality as part of a broad effort to
7 modernize and streamline all the Office rules. The
8 current revision process is also intended to update and
9 harmonize this rule with other rules of the Office of Air
10 Quality.

11 The proposed revisions are the result of a thorough
12 review in a stakeholder process that was inclusive of the
13 Office of Air Quality, representatives of the regulated
14 community, concerned citizens and the environmental
15 community.

16 Upon authorization and promulgation of revisions to
17 45 CSR 5, the Office of Air Quality will seek federal
18 approval of the rule change by the U.S. Environmental
19 Protection Agency for inclusion in the State
20 Implementation Plan for the Federal Clean Air Act.

21 The floor is now open for public comment.

22 MR. JARRELL: My name is Tom Jarrell, and I'm a
23 private citizen. Since 45 CSR 1 is going to be
24 incoordinated with 45 CSR 5, I'd like to refer my comments

1 from 45 CSR 1 to this one here, if there's some way I
2 could, to keep from having to repeat myself. (See
3 attached.)

4 MS. CHANDLER: Thank you. Any other comments? (No
5 response.) There being nothing further, this public
6 hearing for 45 CSR 5 is concluded.

7 (WHEREUPON, the hearing was
8 concluded at 6:23 p.m.)

9 (The following excerpt contains comments made by
10 Mr. Jarrell during the hearing for 45 CSR 1.)

11 MR. JARRELL: My name is Tom Jarrell, and I live in
12 Boone County, West Virginia. My concerns, like I stated,
13 was where you're going to incoordinate 45 CSR 1 to 45 CSR
14 5. Being that 45 CSR 1 was amended or -- what do you call
15 it? -- January 1965 and it's going to be repealed. But it
16 was incoordinate under the West Virginia Air Pollution
17 Control Commission, which was abolished or whatever, to
18 Office of Air Quality.

19 I know I can't get answers, but I'd like to know,
20 Would that mean that the West Virginia Air Pollution
21 Control Commission would be like consolidated now with the
22 Office of Air Quality? I know you probably can't answer
23 it.

24 Then another question I'd like to have answered

1 is, Would this be incoordinate within the GR-10a general
2 permit or within the other, you know, like your R-13, R-
3 35? Because all it has to do is operation of a coal
4 preparation plant. Then where the CSR 45-1, you know, is
5 for a coal refuse disposal area, which is being
6 incoordinated into the operation of a coal preparation
7 plant and handling facility. So now it's going to be all
8 coordinated together or consolidated. So like most of
9 these coal companies have got their preparation plant in
10 one place and then their coal refuse pile where they truck
11 coal within a half-mile or a mile.

12 So what I'd like to know is, Will all of this be
13 incoordinated into operation of a coal preparation plant
14 for fugitive dust matter and particulate matter? What I'm
15 wanting to know is, Would all of this be "conglomolated"
16 into one now area for control and everything? Like I
17 said, it might not make sense to other people, but it does
18 to me because there's a little small coal refuse pile
19 within a hundred feet of where I live. I'm relating to
20 that whether they could come along and the operator or
21 whatever -- see, if this is going to be incoordinated into
22 the new 45 CSR, could they come along and do something to
23 that -- start putting refuse or whatever on to that and
24 then like for control of particulate matter or fugitive

1 dust? Like this starts to burning, because it's been
2 there for years, you know, will Office of Air Quality be
3 the ones that regulates that end of it where these is what
4 I call free-law, mining reclamation, but it's older coal
5 refuse disposals.

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

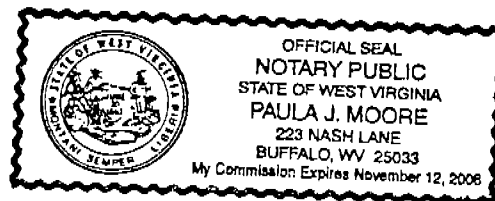
I, the undersigned, Paula J. Moore, a Certified Court Reporter and Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter.

Given under my hand and official seal this 27th day of July 1999.

Paula J. Moore

Certified Court Reporter
Notary Public

My commission expires November 12, 2006.



Timmy
Kane
Linda
Robert
Evel
4406 Venable Ave SE
Charleston, WV 25304
July 28, 1999

Edward L. Kropp
Chief, Office of Air Quality
West Virginia Division of Environmental Protection
1558 Washington Street East
Charleston, West Virginia 25311

Dear Mr. Kropp;

The following comments are in regard to the package of air quality proposed rules. While I represented the League of Women Voters in the stakeholder process, they are not the final or official word of the League, but are my own.

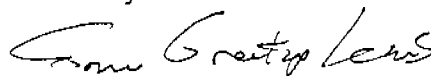
Having read all the proposed rules in one sitting, I am struck first by the amount of discretion given to the Director. I recognize that discretion and judgement are necessary to the effective enforcement of air quality regulations, but in 45CSR 3, section 5.4, the director has discretion to revoke the operating permit of a hot mix asphalt plant that did not maintain the requirements of the rule. Since the requirements are basic--no particulates beyond a certain standard, I believe that the rule should read, "shall revoke, unless good cause is shown by the permittee". Similar language should be used in the equivalent sections throughout this regulatory package. Giving wide latitude to the Director could provide a legal defense to favoritism, should a Director be so inclined.

I am similarly concerned about the lack of deadlines throughout the proposed rules. While it is clearly inappropriate to delineate rigid timelines, it is appropriate to expect that the agency will act expeditiously in its contacts with the regulated community and the public. It would strengthen the rules if such language was placed throughout the rules package where appropriate.

The process used by the Office of Air Quality in revising the rules is excellent. Bringing together the stakeholders to work together, and come to a common understanding, is a process that should be duplicated, not only within the Divisions of Environmental Protection, but throughout state government. I hope that as additional air quality rules are revised that the same process will be used. The rules are indeed improved by this process. I do support the proposed rule revisions and trust that they will be approved by both the Legislature and the EPA.

Thank you for making it possible for me and other citizens to participate in this important project. Inclusiveness made for a better product than earlier rule writing procedures.

Sincerely


Conni Gratop Lewis

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029



Mr. Edward L. Kropp, Chief
Office of Air Quality
West Virginia Division of Environmental Protection
1558 Washington Street, East
Charleston, West Virginia 25311

July 1, 1999

Dear Skipp:

On June 28, 1999, we received your Notice of Public Hearing and Public Comment Period as well as copies of the proposed revisions to 16 rules which your office is proposing to adopt, effective the spring of 2000. Of these 16 proposed rules, we have determined that 14 of them may be impacted by current federal requirements. Therefore, we wish to review these proposed rules and provide your agency with any comments we may have for the public record. This allows your agency to make any agreed upon revisions to the proposed rules pursuant to our comments prior to their formal adoption. This would pave the way for expeditious approvals of these revised rules by EPA at the time of formal submittal.

However, given that we would have had only 14 working days until your scheduled date to close the public record, our office will not have time to perform the comprehensive review we normally provide to your agency. Therefore, I am requesting an extension of the date by which comments may be entered into the public record. If you could provide a 30-day extension we would be most appreciative, however, even a 15-day extension would be helpful. EPA would much prefer to identify any concerns we might have to your office while the State regulations are at the proposal stage, and work with you to resolve these concerns before West Virginia formally adopts and submits these regulations for federal approval.

I know you share my belief that our agencies should work together to avoid disapprovals and the uncertainties they pose to the regulated community and the public. Please let us know your decision as soon as possible by having your staff contact Harold Frankford at 215 814-2108.

Sincerely,

Marcia L. Spink, Associate Director
Office of Air Programs
Air Protection Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Date: 7/1/99	
To	Skip Kropp
Office	West Virginia DEQ, Office of Air Quality
Phone Number	304/558-2496
Fax Number	304/558-3287
Subject	Request for Extension of Time to Submit Comments
From	Marcia L Spink EPA PHONE: (215) 814-2104 FAX: (215) 814-2124
NUMBER OF PAGES INCLUDING COVER SHEET 2	
ORIGINAL TO BE SENT: Yes _____ No _____	
MESSAGE: Request for extension of time to submit comments on West Virginia proposed air quality rules.	

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Karan

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July 9, 1999

Mr. Edward L. Kropp, Chief
Office of Air Quality
W. Va. Div. of Environmental Protection
1558 Washington Street, East
Charleston, West Virginia 25311-2599

**Re: Proposed Revisions to 45 CSR 5 - "To Prevent and Control
Air Pollution from Coal Preparation Plants, Coal Handling
Operations and Coal Refuse Disposal Areas"
Comments of Consolidation Coal Company**

Dear Mr. Kropp:

The following comments are submitted on behalf of Consolidation Coal Company (CONSOL). CONSOL operates coal mines and related facilities in seven states, including several operations in West Virginia, and has significant experience in the areas of coal preparation and processing. As a result, CONSOL has a great interest in regulatory programs affecting coal preparation and handling activities. As you know, CONSOL was represented throughout the Office of Air Quality's recently concluded Regulatory Workgroup proceedings involving the OAQ's PM/SO2 regulations, including 45 CSR 5.

After reviewing the Office of Air Quality's proposed revisions to 45 CSR 5 ("To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"), we are concerned with the following proposed changes:

1. Subsections 3.2 and 3.3 - Opacity exemptions.

These provisions have been revised to reduce the opacity standard (from 60% to 40%) which applies for de minimis periods of time and during efforts to build a fire of operating quality. As CONSOL noted in previous communications to the OAQ's PM/SO2 Subgroup, we do not believe there was a sufficient explanation of why the OAQ views these changes as

ROBINSON & McELWEE LLP

Mr. Edward L. Kropp, Chief
July 9, 1999
Page 2

necessary or how these revisions address the problem with opacity measurement which the OAQ apparently believes exists under the current regulation.

These proposed changes were discussed at the last meeting of the PM/SO₂ Subgroup and it was acknowledged at that time that retention of the existing language in these provisions was acceptable to all participants. Indeed, it is our belief that the proposed changes to these provisions were kept in the proposed rule draft as a result of an oversight or clerical error. We respectfully request that the agency remove such changes from the revised rule before it is submitted for approval by the Legislature.

2. Subsections 11.2 and 11.3 - Operating Permit Requirements.

As noted in my letter of May 7, 1999 to Mr. Jesse Adkins, Assistant Chief and Leader of the PM/SO₂ Subgroup, we remain concerned with respect to the agency's interpretation and application of the 45 CSR 5 operating permit requirements.

The operating permit program under Regulation 5 has been in a state of flux since the October 22, 1993 changes to the rule. On January 13, 1994, the Air Pollution Control Commission issued an Advisory Opinion stating that the completion of sections I, II and XI of the OAQ's operating permit application shall constitute the filing of a "complete application" under Regulation 5. Although the rule was amended again in 1995, no operating permits were ever issued for coal preparation plants.

A General Permit under Regulations 5 and 13 was issued last year. However, coverage under that permit is voluntary, not mandatory, and this requires the filing of a new application -- which normally occurs only when there is construction or modification of a preparation plant eligible for coverage under the permit. Despite this, the OAQ has not clarified the status of those facilities for which Regulation 5 permit applications have been submitted but which have not elected to apply for coverage under the General Permit. (We believe the majority of preparation plants fall within this category.)

Under the language of **subsection 11.2** as now proposed by the agency, the obligation to submit a complete Regulation 5 operating permit application

ROBINSON & McELWEE LLP

Mr. Edward L. Kropp, Chief

July 9, 1999

Page 3

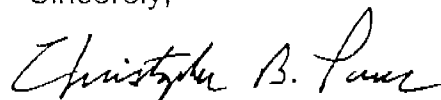
will be applied to any preparation plant which was in existence as of May 1, 1995, and any such plant could be found to be in noncompliance if such an application was not filed by August 1, 1995. To our knowledge, however, no Regulation 13 permit issued to an owner or operator of a coal preparation plant has included any reference to such a requirement, and until this proposed change, the OAQ has not made known that it intended to begin applying this regulatory provision in this manner. We therefore request that the agency replace the language in the proposed rule with a provision which requires that a complete operating permit application be submitted within ninety (90) days following the effective date of the amended rule for all coal preparation plants for which such an application was not previously submitted.

Moreover, the effect of the proposed new version of **subsection 11.3** would be to require the filing of an application for a new or modified Regulation 5 operating permit within 60 days after issuance of a Regulation 13 permit covering construction or modification of a coal preparation plant. However, a stand-alone Regulation 5 operating permit (apart from the General Permit) has never been developed. We therefore request that the agency either add a provision in the rule or adopt a policy which recognizes that such a newly issued Regulation 13 permit may, at the Director's discretion, be utilized to satisfy the requirement for obtaining a Regulation 5 operating permit.

The proposed change to subsection 11.2 was discussed at the last meeting of the PM/SO₂ Subgroup and it was acknowledged at that time that the language requiring submission of applications within ninety (90) days following the effective date of the amended regulation would be inserted, instead of specific dates. We respectfully request that the agency revise this provision accordingly before the proposed rule is submitted for approval by the Legislature.

Thank you for your attention to this matter.

Sincerely,



Christopher B. Power
Counsel, Consolidation Coal Company

cc: Mr. Jesse Adkins
Mr. Richard L. Kerch



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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1650 Arch Street
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Mr. Edward L. Kropp, Chief
Office of Air Quality
West Virginia Department of Environmental Protection
1558 Washington Street, East
Charleston, West Virginia 25311

July 27, 1999

Dear Mr. Kropp:

Thank you for granting the extended opportunity to comment on the proposed revisions to the following regulations: 45CSR2, 45CSR3, 45CSR5, 45CSR6 and 45CSR7 to prevent and control particulate matter pollution. Our comments are outlined in an enclosure to this letter.

EPA has serious concerns regarding the use of "Director discretion" language contained in these revisions. In many instances the regulations provide for the Director to approve alternatives to such things as specified stack test methods or monitoring methods to determine opacity. Such language for "Director discretion" is not approvable for regulations to be included in a State Implementation Plan (SIP). You could render these regulations approvable as SIP revisions by adding language which indicates that the Director would only approve alternatives which have also been federally approved. For regulations being adopted for purposes of taking delegation of New Source Performance Standards or Maximum Achievable Control Technology, it is important to note that currently States may not be delegated the authority to approve alternatives to items such as stack test methods.

Our second major concern is the language which provides automatic exemptions to sources from enforcement action. EPA is currently reviewing its policy on excess emissions. A copy of EPA's current policy statement on this issue is enclosed.

Please include this letter and the enclosed comments in the public record on the proposed rule revisions. Ruth Knapp of my staff has been assigned to this project. She may be reached at (215) 814-2191. If you have any questions, please contact Ruth Knapp or Walter Wilkie, Acting Chief, Technical Assessment Branch at (215) 814-2150.

Sincerely,

Marcia L. Spink
Judith M. Katz, Director
Air Protection Division

Enclosures

cc: John Benedict

Comments on West Virginia Proposed Revisions

General Comments

1. The proposed revisions to 45CSR5 appear to contain additional revisions to the regulation which have not been submitted for inclusion into the State Implementation Plan (SIP).
2. EPA is currently reviewing its policy on excess emissions and start-ups, shut-downs, maintenance and malfunctions. Enclosed, please find EPA's current official policy statement on this issue as described in the memorandum entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" (February 15, 1983). Generally excess emissions during these periods should be handled with enforcement discretion and not automatically exempted from enforcement action. EPA has tried to identify major provisions that may be effected by this policy and any possible revisions to this policy. However, additional provisions in these proposed regulations could also be effected.

Comments on Proposed Changes to WV Regulation 45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"

45-2-2 Definitions

1. Section 2.14 states in part "This term does not include process heaters as defined in subsection 2.27." Process Heaters are defined in subsection 2.26 not subsection 2.27.

45-2-8 Testing, Monitoring, Recordkeeping and Reporting

1. Section 8.1.a and 8.1.b allow the Director to approve equivalent test methods for determining compliance with opacity and mass emission limits. These provisions provide very broad Director's discretion. Although, States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test methods used to determine compliance with opacity or mass limits must be federally approved.
2. Section 8.2.a states that "such monitoring plan shall include, but not be limited to, one or more of the following: continuous measurement of emissions, monitoring of emission control equipment, periodic parametric monitoring, or such other monitoring as required by the Director." This provision appears to indicate that the Director could approve a monitoring plan which did not contain any of the following: monitoring of continuous emissions, monitoring emission control equipment, and parametric monitoring. A clarification should be provided to indicate if this is the intent of the provision, or if the intent was to allow the Director to require monitoring in addition to those types already identified.

3. Section 8.2 a.3 states that “Excursions outside the range of the control equipment or operational parameters . . . will not necessarily constitute a violation of this rule.” This provision implies that excess emissions will not necessarily constitute a violation of the SIP. EPA is currently reviewing the policy regarding excess emissions particularly as they relate to startup, shutdown, maintenance, and malfunction and affirmative defense. This provision appears to remove enforcement discretion and would not be acceptable to EPA.

4. Section 8.5 indicates that the Director may revise testing, monitoring, reporting and recordkeeping instructions pertaining to this rule. The term “instructions” is not defined in the rule. This provision provides for very broad Director’s discretion. A State may approve minor changes to testing, monitoring, reporting and recordkeeping requirements of this rule. However a State may not solely approve significant changes to these portions of the rule. Significant changes to testing, monitoring, reporting and record keeping must be federally approved.

45-2-9 Start-ups, Shut-downs and Malfunctions

1. Section 9.3 makes provisions for reporting malfunctions. See **General Comments #3**. Based on the language in the proposed regulation, this portion of the rule would not be acceptable to EPA.

Comments on Proposed Revisions to WV 45CSR3 - To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants

45-3-2 Definitions

1. The definition of malfunction differs slightly from the definition in 45CSR2. If West Virginia wishes to be consistent, the state could add the phrase “upset condition” as used in 45CSR2.

45-3-3 Emissions of Smoke and/or Particulate Matter Prohibited and Standards of Measurement - Visible

1. Section 3.1 and 3.2 allow the Director to approve equivalent methods for determining opacity. Although States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test methods used to determine compliance with opacity or mass limits must be federally approved.

45-3-5 Permits

1. Section 5.3 indicates that permit applicants must demonstrate that they “will not cause or contribute to the violation of applicable ambient air quality standards.” This section does not contain specific information about how a source would demonstrate that they would not “cause or

contribute to the violation . . . ” The air quality analyses required can sometimes be complex as is the case with some air modeling analyses. It might be helpful to specify the process and/or guidance that would be used by an applicant to make such a demonstration.

45-3-6 Reports and Testing

1. Section 6.1 allows the Director to approve equivalent methods for conducting stack tests instead of using the test in 40 CFR Part 60 Appendix A Method 5. Although, States may approve minor modifications to test procedures, alternative methods for determining compliance cannot be approved solely by the State. Any alternative test methods used to determine compliance with mass emission limits must be federally approved.

Comments on Proposed Revisions to 45CSR5 “To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas.”

45-5-2 Definitions

1. Section 2.15 indicates that the Director may approve any method which is a standardized method for the measurement of opacity. Any method used to determine opacity must be federally approved.

Comments on Proposed Revisions to 45CSR6 “To Prevent and Control Air Pollution from Combustion of Refuse”

45-6-7 Reports and Testing

1. Section 7.1 indicates that the Director may approve alternative stack test methods. Although, States may make minor modifications to test procedures, alternative methods for determining compliance cannot be approved solely by the State. Therefore, any alternative stack test methods used to determine compliance with mass limits must be federally approved.

Comments on 45CSR7 To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations

45-7-10 Exemptions.

1. Section 10.3 exempts maintenance operations from Section 4 (emission limits) if the owner conducts operations in a manner consistent with good air pollution control practices for minimizing emissions. See **General Comment #3**. The current language is not acceptable to

EPA.

2. Section 10.4 allows an owner or operator to apply for alternative visible emission standards for periods of start-up and shut-down. EPA is currently reviewing its policy on excess emissions and start-ups, shut-downs, maintenance and malfunctions. Although this provision does not allow for automatic alternative standards, these provisions could be effected by EPA's policy review.
3. Section 10.5 allows exemptions for small sources from the emission limits of Section 4.1. West Virginia should clarify what source's and/or source types would be effected and demonstrate that this revision would not cause or contribute to violations of ambient air quality standards or increments.
4. Section 10.6 allows the Director to approve exemptions to Subsection 4.2 for sources of emissions that can demonstrate on a case-by-case basis that their emissions are insignificant. West Virginia should clarify what source types this exemption might be applied to and the purpose of providing these exemptions. In addition, the process by which a source obtains an exemption should be included in the provision along with the type of demonstration that would be required to obtain such an exemption.

45-4-11 Alternative Emission Limits for Duplicate Source Operations

1. Section 11.3 indicates that "approval of alternative allowable emission rates...shall be embodied in a permit issued as an existing stationary source operating permit in accordance with 45CSR13." Any alternative allowable emission rate provided under section 11 of 45CSR7 must be embodied in a federally enforceable permit, and during the permit process, the State must notify EPA that a source is using this process to obtain an alternative limit. If this mechanism does not employ a federally enforceable permit, then a public hearing must be held and the alternative emission limit must be submitted as a revision to the SIP.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 15 1983

OFFICE OF
AIR, NOISE AND RADIATION

MEMORANDUM

SUBJECT: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions
Kathleen M. Bennett
FROM: Kathleen M. Bennett, Assistant Administrator
for Air, Noise and Radiation
TO: Regional Administrators, Regions I-X

I have been asked to clarify my memorandum of September 28, 1982, concerning policy on excess emissions during startup and shutdown.

Specifically, I stated that "startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedure for the process and control equipment. Accordingly, it is reasonable to expect that careful planning will eliminate violations of emission limitations during such periods." I further stated that "[i]f excess emissions occur during routine startup and shutdown of such equipment, they will be considered as having resulted from a malfunction only if the source can demonstrate that such emissions were actually caused by a sudden and unforeseeable breakdown in the equipment."

A question has been posed as to whether there can be situations in which it is unreasonable to expect that careful planning can eliminate violations of emission limitations during startup and shutdown. I believe that there can be such situations. One such situation, which was already mentioned in the policy, is a malfunction occurring during these periods. A malfunction during startup or shutdown is to be handled as any other malfunction in accordance with the policy as presently written.

Another situation is one in which careful and prudent planning and design will not totally eliminate infrequent short periods of excesses during startup and shutdown. An example of this situation would be a source that starts up or shuts down once or twice a year and during that period there are a few hours when the temperature of the effluent gas is too low to prevent harmful

ormation of chemicals which would cause severe damage to control equipment if the effluent were allowed to pass through the control equipment.

Therefore, during this latter situation, if effluent gases - are bypassed which cause an emission limitation to be exceeded, this excess need not be treated as a violation^(b) if the source can show that the excesses could not have been prevented through careful and prudent planning and design and^(c) that bypassing was unavoidable to prevent loss of life, personal injury, or severe property damage.

I have clarified the policy concerning this issue. A copy is attached.

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 15 1983

OFFICE OF
AIR, NOISE AND RADIATION

MEMORANDUM

SUBJECT: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions
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Kathleen M. Bennett, Assistant Administrator
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TO: Regional Administrators, Regions I-X

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Attachment

Attachment

POLICY ON EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, MAINTENANCE, AND MALFUNCTIONS

Introduction

Several of the existing State implementation plans (SIPs) provide for an automatic emission limitation exemption during periods of excess emission due to startup, shutdown, maintenance, or malfunction.* Generally, EPA agrees that the imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner and/or operator is not appropriate. However, any activity which can be foreseen and avoided, or planned, is not within the definition of a sudden and unavoidable breakdown. Since the SIPs must provide for attainment and maintenance of the national ambient air quality standards, SIP provisions on malfunctions must be narrowly drawn. SIPs may, of course, omit any provisions on malfunctions. [For more specific guidance on malfunction provisions for RACT SIPs, see the April 1978 workshop manual for preparing nonattainment plans].

I. EXCESS EMISSION FROM MALFUNCTIONS

A. AUTOMATIC EXEMPTION APPROACH

If a SIP contains a malfunction provision, it cannot be the type that provides for automatic exemption where a malfunction is alleged by a source. Automatic exemptions might aggravate air quality so as not to provide for attainment of the ambient air quality standards. Additional grounds for disapproving a SIP that includes the automatic exemption approach are discussed in more detail at 42 FR 58171 (November 8, 1977) and 42 FR 21372 (April 27, 1977). As a result, EPA cannot approve any SIP revisions that provides automatic exemptions for malfunctions.

* The term "excess emission" means an air emission rate which exceeds any applicable emission limitation, and "malfunction" means a sudden and unavoidable breakdown of process or control equipment.

B. ENFORCEMENT DISCRETION APPROACH--SIP EMISSION LIMITATION ADEQUATE TO ATTAIN AMBIENT STANDARDS

EPA can approve SIP revisions which incorporate the "enforcement discretion approach". Such an approach can require the source to demonstrate to the appropriate State agency that the excess emissions, though constituting a violation, were due to an unavoidable malfunction. Any malfunction provision must provide for the commencement of a proceeding to notify the source of its violation and to determine whether enforcement action should be undertaken for any period of excess emissions. In determining whether an enforcement action is appropriate, satisfaction of the following criteria should be considered.

1. To the maximum extent practicable the air pollution control equipment, process equipment, or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;
2. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;
3. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;
4. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and
5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

II. EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, AND MAINTENANCE

Any activity or event which can be foreseen and avoided, or planned, falls outside of the definition of sudden and unavoidable breakdown of equipment. For example, a sudden breakdown which could have been avoided by better operation and maintenance practice is not a malfunction. In such cases, the control agency must enforce for violations of the emission limitation. Other such common events are startup and shutdown of equipment, and scheduled maintenance.

Startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning and design will eliminate violations of emission limitations during such periods. However, for a few sources there may exist infrequent short periods of excess emissions during startup and shutdown which cannot be avoided. Excess emissions during these infrequent short periods need not be treated as violations providing that the source adequately shows that the excess could not have been prevented through careful planning and design and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage.

If excess emissions occur during routine startup and shutdown due to a malfunction, then those instances will be treated as other malfunctions which are subject to the malfunction provisions of this policy. (Reference Part I above).

Similarly, scheduled maintenance is a predictable event which can be scheduled at the discretion of the operator, and which can, therefore, be made to coincide with maintenance on production equipment, or other source shutdowns. Consequently, excess emissions during periods of scheduled maintenance should be treated as a violation unless a source can demonstrate that such emissions could have been avoided through better scheduling for maintenance or through better operation and maintenance practices.

not

Karen
Watson

Ammy
Karen
Laura
Robert
Earl

Edward L. Kropp, Chief
Office of Air Quality
W. V. Division of
Environmental Protection
1553 Washington St. E.
Charleston, WV 25311-2599

July 26, 1999

Mr. Kropp:

I wish to submit written comments for the extended public comment period (July 28, 1999) on the Office of Air Quality proposed rules changes to 45CSR. I presented oral comments at the July 19, 1999 public hearing but recieved no answer to my comments. I respectfully request a reply to these comments if possible.

These comments are in regard to the proposed changes in 45CSR-1, to Prevent and Control Air Pollution from Coal Refuse Disposal Areas, which is going to be repealed and incorporated into 45CSR-5, 45CSR-5, to Prevent and Control Air Pollution from the Operation of Coal Preparation Plants Coal Handling Operations and Coal Refuse Disposal Areas. Also as rule changes to 45CSR-16, Standards of Performance for New Stationary Sources Pursuant to 40CFR Part 60 as these rules apply to Subpart Y, Standards of Performance for Coal Preparation Plants. Comments as follows:

1. 45CSR-1 was first put into effect on January 1, 1965, registration within the former West Virginia Air Pollution Control Commission. Which also registered Coal Preparation Plants. Does the repeal of 45CSR-1 and being incorporated into 45CSR-5 be considered a consolidation of the former WV Air Pollution Control Commission/WV Department of Commerce, Labor & Environmental Resources within the Office of Air Quality, Division of the West Virginia Division of Environmental Protection, Bureau of Environment

2. Once the proposed Rule changes to 45CSR-5 is approved and put into effect by the Office of Air Quality. Will the Operation of a Coal Preparation Plant and Coal Handling Operation now be considered one facility controlled by one entity (subsidiary corporation) or each a separate facility controlled by separate entity (subsidiary corporation) as to being a Owner, Operator or Both.

3. Once the proposed Rule changes to 45CSR-5 is approved and put into effect by the Office of Air Quality. In

reference to comment No.2. Will the Coal Refuse Disposal Areas, or Pile be considered a part of that facility, entity (subsidiary corporation) within the Operation of a Coal Preparation Plant, Coal Handling Operation, no matter how far away these facilities are from each other. for the control of fugitive dust matter or other environmental discharge into the air (burning coal refuse, etc).

4. Once the proposed Rule changes to 45CSR-5 is approved and put into effect by the Office of Air Quality. Can Coal Refuse Disposal Areas, or Pile that were discontinued or haven't been in use for years prior to these proposed change to 45CSR-1 and 45CSR-5, now become a part of a (active) Coal Preparation Plant, Coal Handling Operation. Can these discontinued Coal Refuse Disposal Areas or Pile that are near towns, personal property (Domiciles) now be put back in use again for coal waste disposal (Valley fill).

5. Once the proposed Rule changes to 45CSR-5 is approved and put into effect by the Office of Air Quality. Will the New 45CSR-5 be incorporated within the G-10-A, General Permit or stand alone as a R-5 Permit

Tom D Jarrell

Tom D. Jarrell
Bandy Green Branch
HC 80 Box 26A
Gordon, WV 25093
Phone No. 245-8465

10/10/99
Karen -
Laura
Earl
Robert

Karen



Mr. Edward L. Kropp, Chief
Office of Air Quality, WVDEP
1558 Washington Street, East
Charleston, West Virginia 25311

July 27, 1999

Dear Chief Kropp:

RE: Comments on PM/SO₂ Reg. Revisions

We have reviewed the following three regulations recently proposed for revision by the Office of Air Quality and offer the following comments on behalf of American Electric Power Corp. (AEP). Before addressing specific comments, we want to thank the OAQ for providing the opportunity for us to participate in the stakeholder process used to revise these regulations. The revision of these regulations was simplified under the leadership of the OAQ staff and this process was a well-managed program.

45 CSR 2:

§2.21 AEP suggests that the OAQ reconsider the definition of particulate matter as it appears in the proposed regulation. This definition must be made consistent with the definition found within the NSPS rules that regulate new sources of the type covered by 45CSR2. The proposed language clarifies the fact that 45CSR2 is intended to regulate primary particulates and is not intended to regulate condensable gases. The NSPS regulations for these types of sources (40CFR60 Subparts D, Da, Db, and Dc) use a similar definition and further specify a filter box temperature that prevents the false collection of condensable gases as a particulate (see comment on 45CSR2 Appendix below). The following proposed language should be used in this regulation:

"Particulate matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid, as measured by the applicable reference test method for that type of source or an equivalent or alternative method.

§3.2 and 3.3: AEP requests that the OAQ consider the clarification of using measurements from a certified continuous opacity monitoring system to show compliance with the opacity limit. It is obvious that when method 9 is used, that the data will be in the form of a 6-minute average, however it is not so obvious when a continuous monitoring system is used. The rule should specify that 6-minute averages will be used for the demonstration even when using a monitoring system.

45 CSR 2 APPENDIX:

§4.1.a: At a minimum, AEP suggests that the OAQ change the temperature setpoint of the oven specified as 250 °F to a temperature consistent with the NSPS regulations for sources of the type regulated by 45CSR2. 40CFR60 Subparts D, Da, Db, and Dc each specify a temperature setpoint of 320 °F. Furthermore, reference test method 5B (for scrubbed units) specifies a temperature of 320 °F. A temperature of this magnitude is more in line with actual stack temperatures of the non-scrubbed

utility sources and method 5B and ensures that condensable gases are not transformed into liquid and falsely measured as particulate. A temperature of this magnitude becomes more critical when particulates are being measured on sources that burn the higher sulfur coal common in the East. We believe that a more appropriate way to handle the issue of stack testing under 45CSR2 would be to simply reference the appropriate test method and not attempt to rewrite it within the Appendix to 45CSR2.

45 CSR 5

§2.15: As agreed upon during the stakeholder process, the "opacity" definition should be slightly modified. The second part of the opacity definition should be deleted to make it consistent with the definition for opacity in 45CSR2. The following paragraph properly states the needed revision:

"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.~~

§3.2 and §3.3: Recognizing that the revisions to these two sections were discussed extensively during the stakeholder process, we remain concerned that the stringency of these two requirements is being significantly increased. We understand that the purpose of revising 45CSR5 was to clarify and modernize the regulation but not to increase the stringency. We believe that the new opacity limit listed in these sections should be higher.

We feel a more appropriate opacity limit for §3.2 would be 50% if the OAQ is prepared to slightly increase the stringency of the rule or 55% if the OAQ is satisfied with the current stringency of the rule. We believe that the proper method for determining a 6-minute opacity limit that is equivalent to the previous limit of 5 minutes during a 1-hour period is as follows. Under the old limit, a source could conceivably operate at 60% for a continuous five-minute period before an exceedance occurred. In order to convert to a 6-minute average, one must make the assumption that the source would then be back in compliance with the 20% standard for the final minute of the 6-minute period. The resulting average opacity reading would then be 53% calculated as follows: $[(5*60)+(1*20)]/6$. The equivalent standard for §3.3 could be similarly calculated as 46%. Therefore, with respect to §3.3, we propose a 50% limit if the OAQ is not interested in increasing the stringency of the rule and 45% if the OAQ is prepared to slightly increase the stringency of the rule.

§9.2: We believe that the reference in this section is incorrect and that §9.2 should reference subsection 4.1.b, not §4.2 as noted.

45 CSR 10:

§3.1.a: The applicable emission limit in this section should be modified. Recent modeling completed as part of the Marshall County sulfur dioxide SIP revision process has determined that the proper SO₂ weight emission standard for the fuel burning units of the Kammer Plant should be the product of 2.7 and the total design heat inputs for such units. The paragraph below shows the proposed revision to this section:

For fuel burning units of the Kammer Plant of Ohio Power Company, located in Air Quality Control Region I, the product of ~~6-8~~ 2.7 and the total design heat inputs for such units discharging through those stacks in million British Thermal Units (BTU's) per hour.

§3.8: AEP understands that the OAQ has no intentions of requiring 24-hour stack tests, however as discussed during the stakeholder process, we believe that the opening sentence in this section could be interpreted to require 24-hour stack tests. AEP requests the OAQ reconsider our previous comment and modify the first sentence of this section. The first three words of the sentence should be deleted,

July 27, 1999

Page 3

and the sentence should read as follows: "Compliance with the allowable sulfur dioxide emission limitations..." It seems that the purpose of this sentence is to state the averaging time on which the emission rates are based and is therefore an integral part of the emissions standard and not a testing condition. Reference to compliance tests in this section could be misinterpreted to require a 24 hour long compliance test. There should be no concern that the OAQ's authority to require compliance testing is being circumvented by making the proposed change, as §8.1.a specifically provides the OAQ with ability to require compliance tests.

§8.2.a: AEP recognizes that the issues of testing/demonstrating compliance and monitoring for compliance were discussed extensively during the stakeholder process, however we believe it is imperative that this issue be properly clarified within the rule. This paragraph should make it clear that monitoring is not intended to demonstrate compliance. Compliance is demonstrated by periodically conducting a reference method test. The first sentence of this paragraph should be modified as follows: "...shall install such stack gas monitoring devices as the Director deems necessary to ~~determine~~ monitor compliance with the provisions of this rule" in order to properly reflect the role of a continuous emission monitoring device.

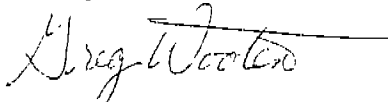
§8.2.c: Similar to our comment on §8.2.a we request that this paragraph be clarified to show that monitoring is not intended as a demonstration test for compliance. The first sentence of this paragraph should be modified as follows: "...manufacturing process source(s) or combustion source(s) shall ~~demonstrate~~ monitor compliance with sections..."

§8.2.c.1.A: As agreed upon during the stakeholder process, a statement should be include in this section confirming that sources meeting the requirements of 40 CFR 75 (Acid Rain) Appendix B will be deemed to have fulfilled the requirements for a the quality assurance requirements.

§8.2.c.2: The subsection referenced in this section appears to be incorrect. We believe the proper reference should be §8.2.c., not §8.5 as noted.

Again, thank you for the opportunity to participate in the stakeholder process that was used to formulate many of the revisions that have been proposed in these regulations and for the opportunity to comment on the proposed regulations. If you have any questions concerning any of the comments that have been made, please contact me at (614) 223-1262 or at the above address.

Sincerely,



Greg Wooten
Air Quality Section
Environmental Services Division

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OF INDEPENDENT LAW FIRMS

Edward L. Kropp, Chief
Office of Air Quality
WV Division of Environmental Protection
1558 Washington Street, East
Charleston, West Virginia 25311

Re: Proposed Modifications to 45 CSR
1,2,3,4,5,6,7,10,16, 17, 18, 23, 25, 33, and
34.

Dear Chief Kropp:

The West Virginia Chamber of Commerce ("Chamber") was a faithful participant in the Office of Air Quality ("OAQ") convened Stakeholder Regulatory Review Workgroup. From those meetings came a number of recommendations and suggestions that were presented to the OAQ for consideration in proposing revision to the West Virginia air quality regulatory program. The Chamber extends its compliments to the OAQ staff for the long hours it committed to this effort. The Chamber is supportive of the review process as a forum available to everyone to listen, learn, and draft proposed state air policy. The open exchange of concerns, ideas, and recommendations has resulted in a proposal package the genesis of which the participants can clearly understand. In some instances compromise was required. The Chamber supports this package of regulatory revisions in the spirit of compromise. These recommended proposals, as a whole, are appropriate and result in improvement in the state air quality program.

The following detailed comments are provided on behalf of the West Virginia Chamber of Commerce.

45 CSR 2 - Particulate Emissions from Boilers

Section 3 Visible Emission Standards - The Chamber had urged consideration of modifications to the criteria for allowing an alternative visible emission standard. The Chamber supports the inclusion of the modifications to the regulation to make it more consistent with the six minute averaging of the rule and to meet the needs of the regulated community, without compromising the ultimate ambient air quality for particulates.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools, to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 2, the Chamber supports the regulatory revisions.

Section 8.4 addresses the potential need for the development of alternatives to the testing, monitoring and reporting requirements of the rule. The Chamber is supportive of the inclusion of this concept. The OAQ proposes to recognize unique operational characteristics that either make the implementation of Regulation 2, Section 8 impossible or unreasonable. This modification is evidence of the OAQ's commitment to work toward the development of a program that works with the regulated community to assure an effective air quality regulatory requirement. The Chamber applauds these and other similar efforts.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

45 CSR 3 - Hot Mix Asphalt

Regulation 3 had not undergone review since 1979. Many of the modifications to this regulation have been proposed to update and streamline the rule. The Chamber is supportive of the proposed changes.

Section 3.2 Start-up and Shut-down of Operations - During the Stakeholder Review Process, the Chamber had urged regulatory recognition of shut-down conditions, as has been done under the remainder of the OAQ regulatory program. The OAQ has proposed inclusion thereof. Again, the Chamber applauds the efforts of the OAQ to streamline the regulations and create consistency where possible.

45 CSR 4 - Objectionable Odors

Regulation 4 is being proposed for significant modification in response to the OAQ's recommendations. The Stakeholder Review Process engaged in lengthy discussions over the concerns of the agency and the problems they wished to see addressed. The Chamber participated in those discussions and is supportive of this ultimate proposal. This rule is new and we will all learn more about its impact on the air quality program as the agency begins to administer it. This proposal is a good first attempt.

Section 2.5 Objectionable Odors - This proposed definition underwent a great deal of discussion during the Stakeholder Review Process. The Chamber is supportive of this definition based upon the representation by the agency that this odor regulation would be implemented based upon a combination of factors (investigations, determinations, and complaints). Recognition of the need for a combination of factors gives the definition of "objectionable odors" the depth it needs to avoid abuse by reported complaints that may or may not be inspired by an environmental condition. The Chamber is supportive of a well designed regulatory program that assures the environmental regulations will not be subject to abuse by parties who may wish to use it to advance alternative political objectives.

Section 4.1 Accidental and Other Infrequent Emissions, Reporting - The Chamber had advanced a concern about the need to create an affirmative obligation for the reporting of accidental or other infrequent emissions that was reasonable. The OAQ's proposal both creates the obligation and clarifies that such a report is due upon the reasonable determination by a person that they are responsible for the objectionable odor. The Chamber is supportive of this language and believes its reasonableness standard complements other more stringent reporting obligations that are truly environmentally-based. The Chamber notes a typographical error where the last line of this regulation should read: "reasonably has knowledge of such discharge."

Section 7 Enforcement - This language is written such that it fails to recognize the notification and investigation process described in Section 3 of this rule. The Chamber is supportive of the need for the OAQ to preserve its authority to exercise its enforcement authorities when the emission of air pollution is causing a violation of the WV Air Pollution Control Act. The Stakeholder Review Process invested significant resources in developing this rule. The Chamber presumes the OAQ intended for this language in Section 7 as a reservation of enforcement authority that would be invoked after reasonable efforts to implement Section 3 had failed.

45 CSR 5 - Coal Preparation Plants, Coal Handling, and Coal Refuse

This regulation has been expanded to incorporate the current 45 CSR 1 which regulates coal refuse. In the interest of consolidating the air quality regulations that impact the coal industry, it was proposed that its requirements be combined with 45 CSR 5. The Chamber participated in the efforts to combine these regulations and complements the OAQ's efforts to affect this combination as seamlessly as possible. This modification is consistent with the intent and purpose of the Stakeholder Review Process which was to revise and update.

Sections 3.2 and 3.3 Particulate Emission Limits - The OAQ has proposed revision to the opacity limits by offering the statement, during the Stakeholder Review Process, that these revisions were based upon the need to address the calculation of averaging, as opposed to aggregation. The regulatory impact of these changes was not readily apparent to any of the participants in the Review Process, to include the OAQ. It is the understanding of the Chamber that these revisions were not intended to be submitted, since the Stakeholder participants were so unclear as to the impact of the proposed change. The Chamber urges that the regulation be restored to its original language.

Section 10 Reports and Testing - The Chamber supports the proposed modifications to this section to emphasize the EPA test methods used by most operations. The proposal merely updates and refines the regulation without changing its effect.

Section 11 Variance - The proposed modifications to the administrative process of granting a variance were discussed at length during the Stakeholder Review Process. The intent of the modifications was to provide a well defined process for managing equipment failure. The Chamber supports the OAQ's inclusion of these revisions. The suggested modifications will serve to enhance the smooth administration of the variance process that currently exists. Administrative efficiency is an important factor and the Chamber applauds the agency's efforts to incorporate such changes.

45 CSR 6 - Combustion of Refuse

Section 3.1.c.4 Pre-Approval of Burning - The proposed revisions to Regulation 6 are principally those revisions recommended by the OAQ during the Stakeholder Review Process. Generally, these modifications have been designed to update this regulation. The Chamber is supportive of the proposed changes and further recommends that the agency consider the development of an interpretive rule, or other appropriate administrative tool for implementation, that will provide guidance to the regulated community concerning the new requirement that approval to conduct burning of land clearing debris must be obtained. Consistent with the stated goals of this regulatory review process, clear communication as to what the agency expects of the regulated community will go far to assure smooth implementation of the modified provisions of Section 3.1.c.4.

45 CSR 7 - Particulate Emissions from Manufacturing Processes

The Stakeholder Review Process devoted significant time to exploring the particulate emissions control program as set forth under Regulation 7. This is a complex rule that attempts to regulate a very diverse universe of manufacturing processes. This fact alone seriously complicates any effort to streamline and clarify its intent. The Chamber extends its compliments to the OAQ staff for its efforts during the Stakeholder discussions to explain the agency's needs with regard to this rule. The Chamber recommends for consideration the future need to review the merit of splitting Regulation 7 into several small regulations that are industry category specific. Such a split would significantly simplify the implementation and compliance with this rule.

Section 2.18 Maintenance Operations - The Chamber had proposed consideration by the Stakeholder Workgroup the need to recognize that certain maintenance operations result in emissions of particles that are not clearly defined under Regulation 7. This lack of clarity had resulted in inconsistent interpretation and enforcement. In response to that request, the OAQ has proposed a definition and a well defined exemption for certain maintenance operations that are not adversely impacting air quality under Section 10.3. The Chamber is supportive of these revisions as resulting in clarification of the regulation. These revisions recognize the fact that certain maintenance operations are insignificant and infrequent sources of particles not warranting extensive regulation, but instead warranting management through good engineering practices.

Section 2.39.d Type 'd' Manufacturing Processes - The Chamber had raise concerns over the need to clarify the scope of those manufacturing processes in which material of any origin undergoes a chemical change. In response to those comments, the OAQ has proposed the phrase "and this chemical change results in the emission of particulate matter to the atmosphere." The Chamber supports this change as one that serves to enhance the implementation of and compliance with this rule.

Section 3.7 Emissions from Storage Structures - The revisions to this section were intended by the Stakeholder Workgroup to be clarifying modifications to the requirement to control emissions from storage structures. The Chamber supports this revision as one that serves to streamline the requirement to control emissions from storage structures.

Section 5 - Control of Fugitive Particulate Matter - It was proposed by the Chamber that it would be appropriate to add language to expand the meaning of a fugitive particulate control system to include process equipment design, control equipment design or operation and maintenance procedures. These are important and effective alternatives that warranted recognition in the regulatory program. The OAQ has proposed inclusion of these alternatives confirming these fugitive control measures. The Chamber supports these modifications as enhancements to the meaning of the rule.

Section 10 - Alternative Visible Emission Standards - The Stakeholder Workgroup engaged in extensive discussions over the need to provide a similar process for demonstrating the need for an alternative visible emission standard for start-up and shutdowns as exists for sources of particles that are regulated from boilers. The results of those discussions are found in the proposed new section 10.4. The Chamber supports these recommended changes that create a process by which a manufacturing source operation is afforded the opportunity of demonstrating the need for an alternative standard that is protective of air quality.

Sections 10.5 and 10.6 Deminimus Sources of Particles - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of particles and mineral acids. Inclusion of these new sections is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 11 - Alternative Emission Limits for Duplicate Source Operations - The OAQ has proposed a section to address duplicate source operations that elect to petition for an alternative emission limit in response comments raised in the Stakeholder Review Process. It was recognized by the Stakeholder Review Workgroup that the issues surrounding the state "duplicate source" rule are very complex. The Chamber supports inclusion of this section that serves to create a review process for alternative emission limits for duplicate source operations. This provides an alternative to litigation which enhances regulatory efficiency.

The Chamber advocated for the removal of the "duplicate source" provisions as an archaic regulatory tool that has long since been rendered obsolete by the Clean Air Act Amendments and specifically by the NSR program. It is recommended that future modifications to Regulation 7 should focus on the need to eliminate these requirements.

45 CSR 10 - Sulfur Oxides

Section 3.4.b. Individual Allowable Stack Emission Rates - The Chamber supports the OAQ's inclusion of provisions that would allow the agency to address those facilities with individual stack allowable emission rates differing from those calculated under the rule, based upon compliance with the criteria set forth in 3.4.b.1 through 3.4.b.6. This rule revision is evidence of the agency's interest in working with the regulated community to assure an implementable program that results in protection of air quality.

Section 4.1.e Deminimus Operations - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of sulfur oxides. Inclusion of this new section is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 10, the Chamber supports the regulatory revisions.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

Section 10.3 Exemptions - The Chamber supports the proposed exemption from the testing, monitoring, recordkeeping and reporting requirements for those operations that are known not to emit levels of sulfur oxides to warrant such requirements. These proposed modifications are clearly intended to streamline the regulation and provide for an appropriate level of regulation commensurate with the environmental impact.

45 CSR 17 - Fugitive Particulate Matter

The proposed revisions to Regulation 17 were presented to the Stakeholder Review Workgroup by the OAQ. The OAQ expressed the need to have a regulatory tool that could be used to require management of fugitive emissions from sources that were not otherwise subject to the OAQ regulatory program. In recognition of that expressed need, it was agreed by the Stakeholder Workgroup that Regulation 17 should be significantly expanded. The

Chamber is supportive of these proposed changes that create a process by which sources would be contacted by the agency and efforts expended to develop a reasonable emissions control or suppression program.

45 CSR 18 - Meat Firing

The Stakeholder Workgoup discussed the history of the promulgation of the meat-firing regulation and concluded that this regulation was no longer warranted, based upon the fact that its provisions had not recently been invoked, implemented, or useful in an manner to the public, the agency or the potential regulated community. The Chamber supports the elimination of this regulation as clearly within the scope of updating the OAQ program.

Additional modifications have been proposed by the Office of Air Quality for the following regulations to make necessary and appropriate cross-references to the federal program. The Chamber is supportive of these modifications.

45 CSR 16 - New Source Performance Standards

45 CSR 23 - Municipal Solid Waste Landfills

45 CSR 25 - Hazardous Waste Treatment, Storage, or Disposal Facilities

45 CSR 33 - Acid Rain

45 CSR 34 - Hazardous Air Pollutants

In conclusion, the Chamber provided an oral statement at the hearing of July 19, 1999. In that statement the Chamber urged that a thorough Response to Comments be provided by the OAQ concerning the proposed rulemaking package that will explain the intent of the modifications as was agreed during the Stakeholder Review Process. This will serve to memorialize the changes that will be made to the regulations and provide guidance concerning the implementation of these changes.

Respectfully, submitted this 27th of July, 1999.


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To: Mr. Edward Kropp **Date:** July 27, 1999
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Fax #: 304-558-1222 **Pages:** 11, including fax
From: Ruth Knapp cover sheet

Comments:

Attached are Comments on West Virginia
Proposed Revisions.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Mr. Edward L. Kropp, Chief
Office of Air Quality
West Virginia Department of Environmental Protection
1558 Washington Street, East
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July 27, 1999

Dear Mr. Kropp:

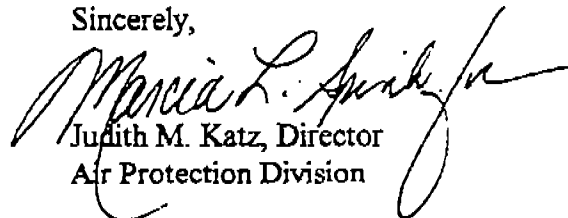
Thank you for granting the extended opportunity to comment on the proposed revisions to the following regulations: 45CSR2, 45CSR3, 45CSR5, 45CSR6 and 45CSR7 to prevent and control particulate matter pollution. Our comments are outlined in an enclosure to this letter.

EPA has serious concerns regarding the use of "Director discretion" language contained in these revisions. In many instances the regulations provide for the Director to approve alternatives to such things as specified stack test methods or monitoring methods to determine opacity. Such language for "Director discretion" is not approvable for regulations to be included in a State Implementation Plan (SIP). You could render these regulations approvable as SIP revisions by adding language which indicates that the Director would only approve alternatives which have also been federally approved. For regulations being adopted for purposes of taking delegation of New Source Performance Standards or Maximum Achievable Control Technology, it is important to note that currently States may not be delegated the authority to approve alternatives to items such as stack test methods.

Our second major concern is the language which provides automatic exemptions to sources from enforcement action. EPA is currently reviewing its policy on excess emissions. A copy of EPA's current policy statement on this issue is enclosed.

Please include this letter and the enclosed comments in the public record on the proposed rule revisions. Ruth Knapp of my staff has been assigned to this project. She may be reached at (215) 814-2191. If you have any questions, please contact Ruth Knapp or Walter Wilkie, Acting Chief, Technical Assessment Branch at (215) 814-2150.

Sincerely,


Judith M. Katz, Director
Air Protection Division

Enclosures

cc: John Benedict

Comments on West Virginia Proposed Revisions

General Comments

- 1.. The proposed revisions to 45CSR5 appear to contain additional revisions to the regulation which have not been submitted for inclusion into the State Implementation Plan (SIP).
2. EPA is currently reviewing its policy on excess emissions and start-ups, shut-downs, maintenance and malfunctions. Enclosed, please find EPA's current official policy statement on this issue as described in the memorandum entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" (February 15, 1983). Generally excess emissions during these periods should be handled with enforcement discretion and not automatically exempted from enforcement action. EPA has tried to identify major provisions that may be effected by this policy and any possible revisions to this policy. However, additional provisions in these proposed regulations could also be effected.

Comments on Proposed Changes to WV Regulation 45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"

45-2-2 Definitions

1. Section 2.14 states in part "This term does not include process heaters as defined in subsection 2.27." Process Heaters are defined in subsection 2.26 not subsection 2.27.

45-2-8 Testing, Monitoring, Recordkeeping and Reporting

1. Section 8.1.a and 8.1.b allow the Director to approve equivalent test methods for determining compliance with opacity and mass emission limits. These provisions provide very broad Director's discretion. Although, States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test methods used to determine compliance with opacity or mass limits must be federally approved.
2. Section 8.2.a states that "such monitoring plan shall include, but not be limited to, one or more of the following: continuous measurement of emissions, monitoring of emission control equipment, periodic parametric monitoring, or such other monitoring as required by the Director." This provision appears to indicate that the Director could approve a monitoring plan which did not contain any of the following: monitoring of continuous emissions, monitoring emission control equipment, and parametric monitoring. A clarification should be provided to indicate if this is the intent of the provision, or if the intent was to allow the Director to require monitoring in addition to those types already identified.

3. Section 8.2 a.3 states that "Excursions outside the range of the control equipment or operational parameters . . . will not necessarily constitute a violation of this rule." This provision implies that excess emissions will not necessarily constitute a violation of the SIP. EPA is currently reviewing the policy regarding excess emissions particularly as they relate to startup, shutdown, maintenance, and malfunction and affirmative defense. This provision appears to remove enforcement discretion and would not be acceptable to EPA.

4. Section 8.5 indicates that the Director may revise testing, monitoring, reporting and recordkeeping instructions pertaining to this rule. The term "instructions" is not defined in the rule. This provision provides for very broad Director's discretion. A State may approve minor changes to testing, monitoring, reporting and recordkeeping requirements of this rule. However a State may not solely approve significant changes to these portions of the rule. Significant changes to testing, monitoring, reporting and record keeping must be federally approved.

45-2-9 Start-ups, Shut-downs and Malfunctions

1. Section 9.3 makes provisions for reporting malfunctions. See **General Comments #3**. Based on the language in the proposed regulation, this portion of the rule would not be acceptable to EPA.

Comments on Proposed Revisions to WV 45CSR3 - To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants

45-3-2 Definitions

1. The definition of malfunction differs slightly from the definition in 45CSR2. If West Virginia wishes to be consistent, the state could add the phrase "upset condition" as used in 45CSR2.

45-3-3 Emissions of Smoke and/or Particulate Matter Prohibited and Standards of Measurement - Visible

1. Section 3.1 and 3.2 allow the Director to approve equivalent methods for determining opacity. Although States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test methods used to determine compliance with opacity or mass limits must be federally approved.

45-3-5 Permits

1. Section 5.3 indicates that permit applicants must demonstrate that they "will not cause or contribute to the violation of applicable ambient air quality standards." This section does not contain specific information about how a source would demonstrate that they would not "cause or

contribute to the violation . . . ” The air quality analyses required can sometimes be complex as is the case with some air modeling analyses. It might be helpful to specify the process and/or guidance that would be used by an applicant to make such a demonstration.

45-3-6 Reports and Testing

1. Section 6.1 allows the Director to approve equivalent methods for conducting stack tests instead of using the test in 40 CFR Part 60 Appendix A Method 5. Although, States may approve minor modifications to test procedures, alternative methods for determining compliance cannot be approved solely by the State. Any alternative test methods used to determine compliance with mass emission limits must be federally approved.

Comments on Proposed Revisions to 45CSR5 “To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas.”

45-5-2 Definitions

1. Section 2.15 indicates that the Director may approve any method which is a standardized method for the measurement of opacity. Any method used to determine opacity must be federally approved.

Comments on Proposed Revisions to 45CSR6 “To Prevent and Control Air Pollution from Combustion of Refuse”

45-6-7 Reports and Testing

1. Section 7.1 indicates that the Director may approve alternative stack test methods. Although, States may make minor modifications to test procedures, alternative methods for determining compliance cannot be approved solely by the State. Therefore, any alternative stack test methods used to determine compliance with mass limits must be federally approved.

Comments on 45CSR7 To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations

45-7-10 Exemptions.

1. Section 10.3 exempts maintenance operations from Section 4 (emission limits) if the owner conducts operations in a manner consistent with good air pollution control practices for minimizing emissions. See **General Comment #3**. The current language is not acceptable to

EPA.

2. Section 10.4 allows an owner or operator to apply for alternative visible emission standards for periods of start-up and shut-down. EPA is currently reviewing its policy on excess emissions and start-ups, shut-downs, maintenance and malfunctions. Although this provision does not allow for automatic alternative standards, these provisions could be effected by EPA's policy review.

3. Section 10.5 allows exemptions for small sources from the emission limits of Section 4.1. West Virginia should clarify what source's and/or source types would be effected and demonstrate that this revision would not cause or contribute to violations of ambient air quality standards or increments.

4. Section 10.6 allows the Director to approve exemptions to Subsection 4.2 for sources of emissions that can demonstrate on a case-by-case basis that their emissions are insignificant. West Virginia should clarify what source types this exemption might be applied to and the purpose of providing these exemptions. In addition, the process by which a source obtains an exemption should be included in the provision along with the type of demonstration that would be required to obtain such an exemption.

45-4-11 Alternative Emission Limits for Duplicate Source Operations

1. Section 11.3 indicates that "approval of alternative allowable emission rates...shall be embodied in a permit issued as an existing stationary source operating permit in accordance with 45CSR13." Any alternative allowable emission rate provided under section 11 of 45CSR7 must be embodied in a federally enforceable permit, and during the permit process, the State must notify EPA that a source is using this process to obtain an alternative limit. If this mechanism does not employ a federally enforceable permit, then a public hearing must be held and the alternative emission limit must be submitted as a revision to the SIP.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 15 1983

OFFICE OF
AIR, NOISE AND RADIATION

MEMORANDUM

SUBJECT: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions
Kathleen M. Bennett
FROM: Kathleen M. Bennett, Assistant Administrator
for Air, Noise and Radiation
TO: Regional Administrators, Regions I-X

I have been asked to clarify my memorandum of September 28, 1982, concerning policy on excess emissions during startup and shutdown.

Specifically, I stated that "startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedure for the process and control equipment. Accordingly, it is reasonable to expect that careful planning will eliminate violations of emission limitations during such periods." I further stated that "[i]f excess emissions occur during routine startup and shutdown of such equipment, they will be considered as having resulted from a malfunction only if the source can demonstrate that such emissions were actually caused by a sudden and unforeseeable breakdown in the equipment."

A question has been posed as to whether there can be situations in which it is unreasonable to expect that careful planning can eliminate violations of emission limitations during startup and shutdown. I believe that there can be such situations. One such situation, which was already mentioned in the policy, is a malfunction occurring during these periods. A malfunction during startup or shutdown is to be handled as any other malfunction in accordance with the policy as presently written.

Another situation is one in which careful and prudent planning and design will not totally eliminate infrequent short periods of excesses during startup and shutdown. An example of this situation would be a source that starts up or shuts down once or twice a year and during that period there are a few hours when the temperature of the effluent gas is too low to prevent harmful

ormation of chemicals which would cause severe damage to control equipment if the effluent were allowed to pass through the control equipment.

Therefore, during this latter situation, if effluent gases are bypassed which cause an emission limitation to be exceeded, this excess need not be treated as a violation⁽¹⁾ if the source can show that the excesses could not have been prevented through careful and prudent planning and design and that bypassing was unavoidable to prevent loss of life, personal injury, or severe property damage.

I have clarified the policy concerning this issue. A copy is attached.

Attachment

Attachment

POLICY ON EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, MAINTENANCE, AND MALFUNCTIONS

Introduction

Several of the existing State implementation plans (SIPs) provide for an automatic emission limitation exemption during periods of excess emission due to startup, shutdown, maintenance, or malfunction.* Generally, EPA agrees that the imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner and/or operator is not appropriate. However, any activity which can be foreseen and avoided, or planned, is not within the definition of a sudden and unavoidable breakdown. Since the SIPs must provide for attainment and maintenance of the national ambient air quality standards, SIP provisions on malfunctions must be narrowly drawn. SIPs may, of course, omit any provisions on malfunctions. [For more specific guidance on malfunction provisions for RACT SIPs, see the April 1978 workshop manual for preparing nonattainment plans].

I. EXCESS EMISSION FROM MALFUNCTIONS

A. AUTOMATIC EXEMPTION APPROACH

If a SIP contains a malfunction provision, it cannot be the type that provides for automatic exemption where a malfunction is alleged by a source. Automatic exemptions might aggravate air quality so as not to provide for attainment of the ambient air quality standards. Additional grounds for disapproving a SIP that includes the automatic exemption approach are discussed in more detail at 42 FR 58171 (November 8, 1977) and 42 FR 21372 (April 27, 1977). As a result, EPA cannot approve any SIP revisions that provides automatic exemptions for malfunctions.

* The term "excess emission" means an air emission rate which exceeds any applicable emission limitation, and "malfunction" means a sudden and unavoidable breakdown of process or control equipment.

B. ENFORCEMENT DISCRETION APPROACH--SIP EMISSION LIMITATION ADEQUATE TO ATTAIN AMBIENT STANDARDS

EPA can approve SIP revisions which incorporate the "enforcement discretion approach". Such an approach can require the source to demonstrate to the appropriate State agency that the excess emissions, though constituting a violation, were due to an unavoidable malfunction. Any malfunction provision must provide for the commencement of a proceeding to notify the source of its violation and to determine whether enforcement action should be undertaken for any period of excess emissions. In determining whether an enforcement action is appropriate, satisfaction of the following criteria should be considered.

1. To the maximum extent practicable the air pollution control equipment, process equipment, or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;
2. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;
3. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;
4. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and
5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

II. EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, AND MAINTENANCE

Any activity or event which can be foreseen and avoided, or planned, falls outside of the definition of sudden and unavoidable breakdown of equipment. For example, a sudden breakdown which could have been avoided by better operation and maintenance practice is not a malfunction. In such cases, the control agency must enforce for violations of the emission limitation. Other such common events are startup and shutdown of equipment, and scheduled maintenance.

Excess Emission approach?
3

Startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning and design will eliminate violations of emission limitations during such periods. However, for a few sources there may exist infrequent short periods of excess emissions during startup and shutdown which cannot be avoided. Excess emissions during these infrequent short periods need not be treated as violations providing that the source adequately shows that the excess could not have been prevented through careful planning and design and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage.

If excess emissions occur during routine startup and shutdown due to a malfunction, then those instances will be treated as other malfunctions which are subject to the malfunction provisions of this policy. (Reference Part I above).

Similarly, scheduled maintenance is a predictable event which can be scheduled at the discretion of the operator, and which can, therefore, be made to coincide with maintenance on production equipment, or other source shutdowns. Consequently, excess emissions during periods of scheduled maintenance should be treated as a violation unless a source can demonstrate that such emissions could have been avoided through better scheduling for maintenance or through better operation and maintenance practices.

not

*** ACTIVITY REPORT ***

RECEPTION OK

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CONNECTION TEL	215 814 2124
CONNECTION ID	
START TIME	07/27 15:33
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PAGES	11
RESULT	OK

**Public Hearing Statement of
Kathy G. Beckett
On Behalf of the West Virginia Chamber of Commerce
July 19, 1999**

My name is Kathy G. Beckett, an attorney with the law firm of Jackson & Kelly PLLC. I am offering the following statement on behalf of the West Virginia Chamber of Commerce ("the Chamber") concerning the rulemaking package presented for comment by the Office of Air Quality addressing 45 CSR 1, 2, 3, 4, 5, 6, 7, 10, 12, 16, 17, 18, 23, 25, 33, and 34. Although the Chamber will be filing more detailed written comments concerning each of these rules by the filing deadline of July 28, 1999, it would like to offer the following general comments on this rulemaking package.

The Office of Air Quality ("OAQ") held a public meeting in Flatwoods, WV on November 17, 1998, where it announced its goal of updating and "harmonizing" OAQ's existing rules in time for submittal to the 2000 Legislature. It was announced that all rules were open for discussion and review. With that announcement began a rigorous schedule of meetings to begin the process of collecting comments and ideas about the need to update and streamline the state's air quality regulatory program. For those of you who attended the meetings, I do not have to tell you about the tireless commitment of time the OAQ staff devoted to managing the review process. Additional support from the stakeholder participants combined to create a very rich experience.

The Chamber is a strong supporter of the stakeholder review process. The model where a state administrative agency invites the public to engage in an honest, thoughtful, open and informal exchange of interests and ideas with the goal of proposing public policy is an excellent one. Those who attended and participated in the meetings that have taken place over the past several months were presented with an opportunity to inquire as to the

purpose of various provisions, question one another's needs, suggest solutions to issues, and propose language, all of which were presented to the Chief for his consideration." The more varied the vantage points of those engaged in the discussion the more creative the answer became. The Chamber applauds this process and encourages the agency and the public to look for other opportunities to engage in such an exercise.

As will be identified in the written comments filed on behalf of the Chamber, there is a very delicate balance that is created in the spirit of compromise. Some of the proposed modifications that were the subject of the review process represent concepts that meet the specific needs and concerns of certain stakeholders. Recognition of the needs of all stakeholders and balancing those needs against on another ^{and the law} is what the development of public policy is about. Great efforts were made during the discussions to blend the needs of the group into the recommended changes. The Chamber recommends that the OAQ to develop a thorough Response to Comments, as a means of recording the intent of the modifications that have been made.

What made this process work is the stated goal of streamlining and updating the program. Where appropriate, the OAQ has proposed incorporation of the updated federal air program. The OAQ has also proposed removal of provisions that are no longer useful. Although this package certainly represents progress, there remain antiquated regulatory concepts that we would all be well served to review again. Tossing away items from our past can be difficult, but the result could be a fresh, new, and efficient regulatory program.

Tonight the Chamber is participating in the next phase of the public review process by providing oral comments on the proposed regulatory changes that have been inspired, in part, by the recommendations of the stakeholders. The Chamber supports the stakeholder process and supports this rulemaking package.

45CSR5

TO PREVENT AND CONTROL AIR POLLUTION FROM COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS

AND

45CSR1

TO PREVENT AND CONTROL AIR POLLUTION FROM COAL REFUSE AREAS

RESPONSE TO COMMENTS

On July 19, 1999 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR5 "To Prevent and Control Air Pollution from Coal Preparation Plants, Coal Handling Operation and Coal Refuse Disposal Areas". Written comments were accepted through 5 pm on Wednesday July 28, 1999. The changes proposed by the OAQ will combine the requirements of 45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Areas" with this rule. 45CSR1 will be repealed. There was one oral and one written comment specific to 45CSR1. There was one oral and six written comments specific to 45CSR5. In addition, two persons commented at the public hearing concerning all of the OAQ's proposed rules. Both commenters were generally supportive of the proposed rules and the stakeholder process that was utilized by the OAQ to generate the proposed rules. One comment was received from the United States Environmental Protection Agency, Region III, requesting that the public comment period be extended. The OAQ responded to this comment by extending the comment period from July 19, 1999, to July 28, 1999. The OAQ has summarized these comments and provides the following response.

I. Commenter: Tom Jarrell (Comments apply equally to 45CSR1 and 45CSR5)

COMMENT A. *(Oral Comment on July 19, 1999) The commenter expressed concern that the consolidation of 45CSR1 with 45CSR5 would dilute and/or eliminate the requirements of 45CSR1 and questioned if the consolidation would also mean that the West Virginia Air Pollution Commission will be consolidated into the Office of Air Quality. The commenter questioned if the requirements of 45CSR1 had been incorporated into the General Permit for Coal Preparation Plants.*

RESPONSE A. All of the enforceable requirements of 45CSR1 have been incorporated into 45CSR5 and no loss of enforceability will occur as a result. The Air Pollution Control Commission (APCC) was dissolved in 1994 with the formation of the West Virginia Bureau of the Environment, Division of Environmental Protection (WV-DEP). Within the WV-DEP, the Office of Air Quality assumed responsibility for all of the rules and regulations of the dissolved APCC. 45CSR1 has not been updated since 1965 and thus still contains the archaic APCC designation. 45CSR5 having been updated contains the current

Office of Air Quality designation. The General Permit for Coal Preparation Plants contains none of the requirements of 45CSR1, thus this change will have no effect.

COMMENT B. *(Comment #1 - Written Comments of July 26, 1999) The commenter questions the effect of combining 45CSR1 and 45CSR5 on the offices of the Air Pollution Control Commission and the Office of Air Quality.*

RESPONSE B. See "Response A"

COMMENT C. *(Comment #2 - Written Comments of July 26, 1999) The commenter questioned if one effect of combining 45CSR1 and 45CSR5 would cause the operation of a Coal Preparation Plant and a Coal Handling Operation to be considered one facility or separate facilities.*

RESPONSE C. There will be no loss of enforceability of any of the individual requirements by combining these rules. The rules will be enforceable whether or not a preparation plant and a coal handling facility are considered one or separate facilities. Whether they are considered one or separate facilities depends on whether or not they are on contiguous property. The rules may be enforced against the owner or the operator or both.

COMMENT D. *(Comment # 3 - Written Comments of July 26, 1999) In reference to "Comment C", above, the commenter questions if Coal Refuse Areas or Piles would be considered part of the facility no matter how far away they might be from a Coal Handling Facility or a Coal Preparation Plant for the control of fugitive dust matter.*

RESPONSE D. A coal refuse area on contiguous property with a coal preparation plant will be considered one facility. If on separate parcels of land they will be considered separate facilities. In either case all the requirements of the combined rule will be enforceable.

COMMENT E. *(Comment #4 - Written Comments of July 26, 1999) The commenter is concerned that the effect of combining 45CSR1 and 45CSR5 will make it possible or easier to commence using an inactive or discontinued coal refuse site*

RESPONSE E. The combining of these rules has no effect on a company's ability to commence using an inactive refuse site. The current rules nor the combined version contain any provisions that prohibit the start-up of these sites.

COMMENT F. *(Comment #5 - Written Comments of July 26, 1999) The commenter questions if the combined 45CSR5 will be incorporated into the General Permit G-10-A or stand alone as an R-5 Permit.*

RESPONSE F. General Permit G-10-A (now designated G-10-B) does not include coal refuse piles under its coverage and the OAQ has no intention of expanding the General Permit to include such facilities. We note that none of OAQ's rules currently require a permit for coal refuse piles and the consolidation of Rules 1 and 5 will not change this fact.

II. Commenter: CONSOL

COMMENT A. Opacity exemptions
The provisions of subsections 3.2 and 3.3 - opacity exemptions, were revised to allow for averaging of the exemption period with a corresponding reduction in the allowable opacity from 60% to 40%. These proposed changes were discussed at the last stakeholder meeting and it was acknowledged at that time that retention of the existing language in these provisions was acceptable to all participants. The commenter believes that the proposed changes to these provisions were kept in the proposed rule draft as a result of an oversight or clerical error. The commenter requested that the agency restore the original language.

RESPONSE A. The OAQ agrees that the proposed changes were left in the proposed rule as an oversight. A correction will be made by retaining the original language in 45CSR5, subsections 3.2 and 3.3.

COMMENT B. Operating permit requirements
Specific Comment #1
Commenter expressed concern with language in subsection 11.2 which as proposed requires that any preparation plant which was in existence as of May 1, 1995 shall have filed a completed permit application by August 1, 1995. The commenter also noted that the proposed change to subsection 11.2 was discussed at the last meeting of the PM/SO₂ Subgroup and it was agreed that the language requiring submission of application within 90 days following the effective date would be inserted instead of specific dates.

Specific Comment #2
The commenter also expressed concern that the effect of the proposed version of subsection 11.3 is to require the filing of an application for a new or modified Regulation 5 operating permit within 60 days after issuance of a Regulation 13 permit permitting construction, modification or relocation of a coal preparation plant.

RESPONSE B-1. The proposed revision to subsection 11.2 does not impose any new requirement on any facility, the proposed language simply replaces references to the current rule's effective date with the actual dates.

OAQ records indicate that the retention of the "effective date" language, rather than specific dates was discussed in the last meeting of the PM/SO₂ Subgroup in relation to subsection 11.3, not subsection 11.2 as the commenter contends.

RESPONSE B-2. The OAQ recognizes that the agency has not fully implemented the Regulation 5 operating permit program, and companies may not be fully aware that they are obligated to file either new or amended Regulation 5 operating permit applications. Therefore, the OAQ will revise subsection 11.3 to reflect the effective date of the requirement to submit an application for an operating permit by replacing the language "after the effective date...." with "...after May 1, 1995". Recognizing the incomplete implementation of the program, the OAQ will also provide a grace period for those who may not have submitted an application pursuant to this requirement by including the language "or within ninety (90) days after the effective of this rule, whichever comes later".

III. Commenter: US EPA

COMMENT A. SIP issue

The proposed revisions to 45CSR5 appear to contain additional revisions to the regulation which have not been submitted for inclusion into the State Implementation Plan (SIP).

RESPONSE A. EPA is correct, the version of 45CSR5 which recently received SIP approval was promulgated in the 1993 legislative session. The version that the stakeholder group worked from was promulgated in the 1995 legislative session and differs from the 1993 version. The 1995 version has not received SIP approval.

COMMENT B. Definition of opacity, subsection 2.15

Section 2.15 indicates that the Director may approve any method which is a standardized method for the measurement of opacity. Any method used to determine opacity must be federally approved.

RESPONSE B. OAQ recognizes EPA's policy and guidance on Director's discretion and notes that during the stakeholder process it was decided to make definitions consistent throughout all OAQ rules. The language beginning with "as determined by any chart....." through ".....by the Director" was added during stakeholder discussions of Rule 5. However, in later discussions concerning

consistency in the rules it was decided that this language should be removed from the definition of “opacity” in all rules. This language was inadvertently left in Rule 5. Consistency will be attained by removing the indicated language.

IV. Commenter: WV Chamber of Commerce

COMMENT A. Opacity exemptions

The provisions of subsections 3.2 and 3.3 - opacity exemptions, were revised to allow for averaging of the exemption period with a corresponding reduction in the allowable opacity from 60% to 40%. These proposed changes were discussed at the last stakeholder meeting and it was acknowledged at that time that retention of the existing language in these provisions was acceptable to all participants. The commenter believes that the proposed changes to these provisions were kept in the proposed rule draft as a result of an oversight or clerical error. The commenter requested that the agency restore the original language..

RESPONSE A. The OAQ agrees that the proposed changes were left in the proposed rule as an oversight. A correction will be made by retaining the original language in 45CSR5, sections 3.2 and 3.3.

COMMENT B. Sections 10 and 11

The commenter expressed support for the stakeholder process and proposed revisions to 45CSR5 in the spirit of compromise.

RESPONSE B. No response required.

V. Commenter: Conni Gratop Lewis

COMMENT A. *The commenter expressed concern about the lack of deadlines throughout the proposed rules. The commenter believes the rules would be strengthened if such language was included in the rules where appropriate.*

RESPONSE A. The OAQ believes that deadlines are established in 45CSR5 are appropriate and sufficient.

COMMENT B. *The commenter expressed support for the stakeholder process and 45CSR5 as proposed.*

RESPONSE B. No response required.

VI. Commenter: American Electric Power

COMMENT A. Definition of opacity, subsection 2.15
Commenter noted that the definition of opacity should be modified to make it consistent with the definition in 45CSR2.

RESPONSE A. The OAQ concurs and will make the change.

COMMENT B. Opacity exemptions
The provisions of subsections 3.2 and 3.3 - opacity exemptions, were revised to allow for averaging of the exemption period with a corresponding reduction in the allowable opacity from 60% to 40%. These proposed changes were discussed at the last stakeholder meeting and it was acknowledged at that time that retention of the existing language in these provisions was acceptable to all participants.

RESPONSE B. The OAQ notes that the proposed changes were left in the proposed rule as an oversight. A correction will be made by retaining the original language in 45CSR5, sections 3.2 and 3.3.

COMMENT C. Subsection 9.2
Commenter believes that the reference in subsection 9.2 should be to subdivision 4.1.b, not subsection 4.2 as noted.

RESPONSE C. The OAQ concurs and will make the correction.