

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

RECEIVED
1997 AUG 28 PM 2:50
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

CITE AUTHORITY W. Va. Code §16-20-5

AMENDMENT TO AN EXISTING RULE: YES NO

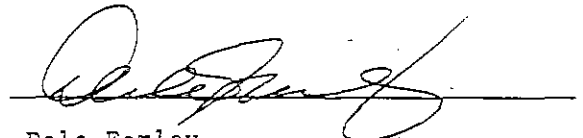
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR5

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

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Dale Farley
Chief, Office of Air Quality
Division of Environmental Protection

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR5 - "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations"

Type of Rule: X Legislative Interpretive Procedural

Agency: West Virginia Air Pollution Control Commission

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next 1993-94	1994-95
Estimated Total Cost	\$133,500	\$ ----	\$136,050	\$259,050	\$219,750
Personal Services	121,500	----	134,250	248,250	207,750
Current Expense	----	----	----	----	----
Repairs and Alterations	----	----	----	----	----
Equipment	12,000	----	1,800	10,800	12,000
Other	----	----	----	----	----

2. Explanation of above estimates:

Permitting and enforcing particulate matter emissions for coal handling facilities is required under current regulations. However, the requirement of operation permits needs improved and expanded in conjunction with increased inspections. The above estimates reflect incremental cost increases for personnel and equipment. Note: costs would decrease after a one-to-two year period of implementation after permit reissuance is completed. *Fiscal year costs reflect the total costs of the program including monies currently expended. The current fiscal year ('92-'93FY) reflects ten months at current amounts and two months at the increased amount. **Annual costs reflect only those additional sums needed to implement this rule above current budget expenditures.

3. Objectives of these rules:

The objective of the current rule and proposed revisions is to control or minimize the emissions of particulate matter at coal preparation and coal handling facilities to meet national and state ambient air quality standards; and to otherwise prevent "statutory air pollution" including nuisance dust emissions. The proposed rule revisions: (1)

Appendix B
Fiscal Note For Proposed Rules
Page Two

clarify and strengthen fugitive dust emissions control measures in a small area near Follansbee, West Virginia to meet federal Clean Air Act requirements; (2) specify compliance testing methodology; (3) updates a rule originally issued in 1968; and (4) expands and utilizes an operation permit system for enforcement and tracking of emissions instead of limited permits and preparation plant registration.

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

As reflected in estimated costs under Item 1, the commitment of 6.5 man-years of effort as compared to 3.5 man-years possible under previous budget situation.

B. Economic impact on political subdivisions; specific industries; specific groups of citizens.

Minimal impact above current regulatory requirements.

C. Economic impact on citizens/public at large.

Small impact above current levels reflected in incremental enforcement/permitting cost estimates.

Date: August 28, 1992

Signature of agency head or authorized representative:



G. Dale Farley
Chief, Office of Air Quality

DATE: August 28, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: G. DALE FARLEY
CHIEF, OFFICE OF AIR QUALITY
DIVISION OF ENVIRONMENTAL PROTECTION

LEGISLATIVE RULE TITLE: To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations

1. Authorizing statute(s) citation WV Code §16-20-5

2. a. Date filed in State Register with Notice of Hearing:
Originally filed January 6, 1992
Notice of Continuance filed February 21, and March 25, 1992

b. What other notice, including advertising, did you give of the hearing?
Class II legal advertisement filed in a newspaper published in each of
the Air Quality Control Regions of West Virginia.

c. Date of hearing(s): May 5, 1992

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 28, 1992

f. Name and phone number of agency person to contact for additional information:

G. Dale Farley, Chief

Office of Air Quality (Phone: 558-2275)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

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: _____ 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
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In this Box

FILED

1992 FEB 21 AM 11:30

OFFICE OF JUSTICE ADMINISTRATION
SECRETARY OF STATE

NOTICE OF CONTINUANCE
NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Air Pollution Control Commission TITLE NUMBER: 45 CSR 5

RULE TYPE: Legislative; CITE AUTHORITY WV Code §29A-3-1

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45 CSR 5

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

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

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: April 17, 1992 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: WV Air Pollution Control Commission

1558 Washington Street, East

Charleston, WV 25311


COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Same as above.

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


G. Dale Farley, Director

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In this Box

FILED
1992 MAR 16 PM 2:02
STATE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF CONTINUANCE
NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Air Pollution Control Commission TITLE NUMBER: 45 CSR 5

RULE TYPE: Legislative; CITE AUTHORITY WV Code §29A-3-1

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45 CSR 5

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: May 5, 1992 TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: WV Air Pollution Control Commission
1558 Washington Street, East
Charleston, WV 25311

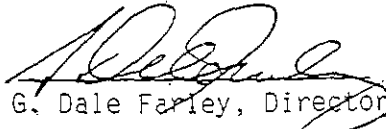
COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Same as above.

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


G. Dale Farley, Director



West Virginia Department of
Commerce, Labor & Environmental Resources
Air Pollution Control Commission

1558 Washington Street, East
Charleston, West Virginia 25311

Telephone: (304)348-4022
or (304)348-3286
Fax: (304)348-3287

NOTICE OF PUBLIC HEARING

On Tuesday, May 5, 1992 beginning at 10:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rule 45 CSR 5 - "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations".

Upon authorization and promulgation, this legislative rule will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

The earlier hearing on this legislative rule scheduled for Friday, April 17, 1992, has been continued until the date previously outlined herein.

Copies of the proposed legislative rule are available for public review in the Keyser-Mineral County Public Library, 105 North Main Street, Keyser, WV.

G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

State of West Virginia, County of Upshur, ss:

RECEIVED

22 APR 20 11 21 AM '92

WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

..... Douglas M. Leifheit
Record Delta, a newspaper published at Buckhannon in the said county, do hereby
certify that the annexed
Notice Of Public Hearing

.....
was published once a week for (2) two successive weeks in
said Record Delta newspaper published as aforesaid, commencing on the 27th day
of March and the 3rd day of April days of 1992.....

Given under my hand this 16th day of April of 1992.....

..... *Douglas M. Leifheit* Advertising Manager

Printers fee \$ 10.33.....

WEST VIRGINIA, UPSHUR COUNTY, TO-WIT:

Subscribed and sworn to before me this 17th day of April day of 1992.....

..... *Linda Snyder* Notary Public.

My Commission expires
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LINDA SNYDER
P. O. Box 1108
Buckhannon, WV 26201
My Commission Expires March 29, 1999

NOTICE OF PUBLIC HEARING
On Tuesday, May 5, 1992 beginning at 10 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rule 45 CSR 5 - "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations".
Upon authorization and promulgation, this legislative rule will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.
The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.
The earlier hearing on this legislative rule scheduled for Friday, April 17, 1992, has been continued until the date previously outlined herein.
Copies of the proposed legislative rule are available for public review in the Gassaway Public Library, 100 Birch Street, Gassaway, WV.
G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission 1558 Washington Street, East Charleston, West Virginia 25311 (3-274-3)

NOTICE OF PUBLIC HEARING

On Tuesday, May 5, 1992 beginning at 10:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rule 45 CSR 5- "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations." Upon authorization and promulgation, this legislative rule will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1556 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record. The earlier hearing on this legislative rule scheduled for Friday, April 17, 1992, has been continued until the date previously outlined herein.

Copies of the proposed legislative rule are available for public review in the office of the WV Air Pollution Control Commission, Northern Panhandle Regional Office, 1911 Warwood Avenue, Wheeling, WV.

G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1556 Washington Street, East
Charleston, West Virginia 25311
Intel., Apr. 3, 10
News-Reg., Apr. 3, 10

RECEIVED
92 APR 17 AM 11:20
WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

I, Bonnie Mattern for the publisher of the

~~WHEELING NEWS REGISTER~~
WHEELING INTELLIGENCER newspapers published in the CITY OF

WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:

April 3, 10, 1992

commencing on the 3 day of April, 19 92

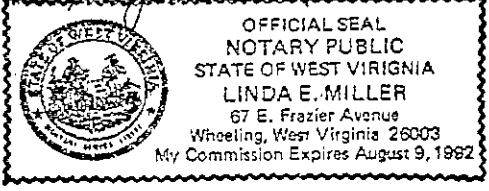
Given under my hand this 15 day of April, 19 92
Bonnie Mattern

Sworn to and subscribed before me this 15th day of April, 19 92, at WHEELING, OHIO COUNTY, WEST VIRGINIA

Linda E. Miller
Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires August 9, 1992



NOTICE OF PUBLIC HEARING

On Tuesday, May 5, 1992 beginning at 10:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rule 45CSR 5 - "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations".

Upon authorization and promulgation, this legislative rule will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

The earlier hearing on this legislative rule scheduled for Friday, April 17, 1992, has been continued until the date previously outlined herein.

Copies of the proposed legislative rule are available for public review in the Parkersburg/Wood County Public Library, 3100 Emerson Avenue, Parkersburg, West Virginia.

G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

March 31, April 7

N

MARCIA MOORE

being first duly sworn, says that the
notice of public hearing

RECEIVED

92 APR 15 AM 10:45

WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

hereto attached was printed in the Parkersburg News

a daily newspaper published
in the City of Parkersburg, Wood County, West Virginia, and posted

at the front door of the Court House for two

successive weeks, the first publication and posting thereon being on
the 31st day of MARCH 19 92, and subse-

quent publication on the 7th day of APRIL 19 92,

the day of 19 , the day of

 19 , the day of

19 , and the day of 19 .

Printer's Fee, \$ 26.76

2 3/8 x 103 = 244,625 words @ 10.9375

Marcia Moore

Subscribed and sworn to before me this 7th day of
APRIL 19 92

Robert C. Covey
Notary Public for Wood County, West Virginia

My commission expires July 23, 1994

OFFICIAL SEAL
NOTARY PUBLIC, STATE OF WEST VIRGINIA
ROBERT C. COVEY
P. O. BOX 1707 PARKERSBURG, WV 26102
MY COMMISSION EXPIRES JULY 23, 1994

I, as an officer of the News-Tribune, a daily newspaper published at Keyser, Mineral County, West Virginia, hereby certify that the Air Pollution

Control Permit
in the case of Notice of
Public Hearing: Coal Prep.
Plants and coal handling operations

vs. _____

a copy whereof is hereto annexed has been published for _____ consecutive _____ weeks

in said NEWS-TRIBUNE, the first publication being on the _____ 30th day of _____ March

19 92
Given under my hand at Keyser this _____ 6th day of _____ April
19 92

James L. Lettich

Publisher

Publisher's Fee
\$23.88

RECEIVED

92 APR -8 PM 12:02

WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

NOTICE OF PUBLIC HEARING

On Tuesday, May 5, 1992 beginning at 10:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rule 45 CSR 5- "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations".

Upon authorization and promulgation, this legislature rule will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

The earlier hearing on this legislative rule scheduled for Friday, April 17, 1992, has been continued until the date previously outlined herein.

Copies of the proposed legislative rule are available for public review in the Keyser-Mineral County Public Library, 105 North Main Street, Keyser, WV.

G. Dale Farley
Secretary

West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

3:30
4:6

Given under my hand on this the 6th day of April, 1992. My commission expires Feb. 8, 1993.

a. Judith Layman

NOTICE OF PUBLIC HEARING

On Tuesday, May 5, 1992, beginning at 10:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rule 45 CFR 5 - "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations".

Upon authorization and promulgation, this legislative rule will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

The earlier hearing on this legislative rule scheduled for Friday, April 17, 1992, has been continued until the date previously outlined herein.

Copies of the proposed legislative rule are available for public review in the Martinsburg-Berkeley County Public Library, 101 King Street, Martinsburg, WV.

G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311
328;4:4(2)

RECEIVED

92 APR 15 AM 10:49

WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

Certificate of Publication

This is to certify the annexed advertisement

WV DEPT. OF COMM. LABOR & ENV. RES.

PUBLIC HEARING WV AIR POLLUTION CONTROL COMMISSION

appeared for2... consecutive ^{days} weeks
in The Journal Publishing Company a newspaper published in the City of Martinsburg, W. Va., in its issue beginning

3/28.....

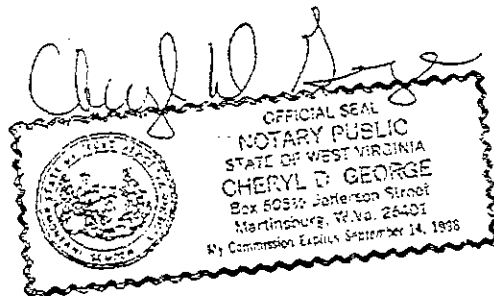
and ending

4/4

The Journal

Penelope K. McCann

Fee \$28.04.....



AFFIDAVIT OF PUBLICATION

RECEIVED

92 APR 15 AM 10:00

WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

NOTICE OF PUBLIC HEARING
 On Tuesday, May 5, 1992 beginning at 10:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative Rule 45 CSR 5 - "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations".
 Upon authorization and promulgation, this legislative rule will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.
 The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.
 The earlier hearing on this legislative rule are available for public review in the Cabell County Public Library, 455 9th Street Plaza, Huntington, WV.

G. Dale Farley
 Secretary
 West Virginia
 Air Pollution
 Control Commission
 1558 Washington
 Street East
 Charleston,
 West Virginia 25311
 LH-483 4-4-11-92

**STATE OF WEST VIRGINIA,
 COUNTY OF CABELL, TO-WIT:**

I, Connie Rappold being first duly sworn, depose and say that I am Legal Clerk for The Herald-Dispatch, a corporation, who publishes at Huntington, Cabell County, West Virginia, the newspaper: The Herald-Dispatch, a independent newspaper, in the morning seven days each week, Monday through Sunday including New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas; that I have been duly authorized by the Board of Directors of such corporation to execute this affidavit of publication for an on behalf of such corporation and the newspaper mentioned herein; that the legal advertisement attached in the left margin of this affidavit and made a part hereof and bearing number LH-483 was duly published in

The Herald-Dispatch

one time, once a week for 2 successive weeks, commencing with its issue of the 4th day of April, 19 92, and ending with the issue of the 11th day of April, 19 92, and was posted at the East Door of Cabell Co. Courthouse

on the 11th day of April, 19 92: that said legal advertisement was published on the following dates: April 4, 11 1992

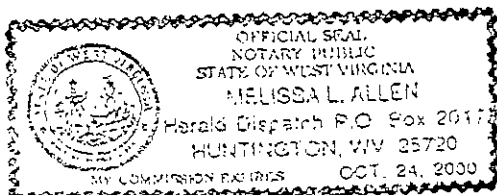
\$47.36; that the cost of publishing said annexed advertisement as aforesaid was \$47.36; that such newspaper in which such legal advertisement was published has been and is now published regularly, at least as frequently as once a week for at least fifty weeks during the calendar year as prescribed by its mailing permit, and has been so published in the municipality of Huntington, Cabell County, West Virginia, for at least one year immediately preceding the date on which the legal advertisement set forth herein was delivered to such newspaper for publication; that such newspaper is a newspaper of "general circulation" as defined in Article 3, Chapter 59, of the West Virginia Code, within the publication area or areas of the municipality of Huntington, Cabell and Wayne Counties, West Virginia, and

that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper on each date published consists of not less than four pages without a cover; and that it is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices.

Connie Rappold

Taken, subscribed and sworn to before me in my said county this 11th day of April, 19 92

My commission expires October 24, 2000
Melissa L. Allen



Notary Public
 Cabell County,
 West Virginia

RECEIVED
92 APR -8 PM 12:01
WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

PUBLISHER'S CERTIFICATE

VS.

STATE OF WEST VIRGINIA,
COUNTY OF HARRISON

I, Deborah S. Veltri

Classified Office Manager of THE CLARKSBURG EXPONENT, a newspaper of general circulation published in the City of Clarksburg, County and State aforesaid, do hereby certify that the annexed

Notice of Public Hearing

was published in said THE CLARKSBURG EXPONENT once a week for 2 successive weeks, commencing on the 27 day of March 19 92 and ending on the 3 day of April 19 92

The publisher's fee for said publication is \$ 16.98

Given under my hand this 3 day of April 1992

Deborah S. Veltri
Classified Office Mgr. of The Clarksburg Exponent

SEAL

Subscribed and sworn to before me this 3 day

of April 19 92

[Signature]
Notary Public in and for Harrison County, WV.

My commission expires on the 24th day of October 1993.

NOTICE OF PUBLIC HEARING
On Tuesday, May 5, 1992, beginning at 10:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rule 45 CSR 6 - "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations".
Upon authorization and promulgation, this legislative rule will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.
The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony of all interested parties will be accepted and made part of the record.
The earlier hearing on this legislative rule scheduled for Friday, April 17, 1992, has been continued until the date previously outlined herein.
Copies of the proposed legislative rule are available for public review in the office of the West Virginia Air Pollution Control Commission, North Central Regional Office, 517 1/2 East Park Avenue, Fairmont, WV.
G. Dale Farley
Secretary
West Virginia
Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,

KANAWHA COUNTY, TO-WIT:

I, Delia Haddrell OF

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: PUBLIC HEARING

HAS DULY PUBLISHED IN SAID PAPER(S) ON THE DATES
LISTED BELOW, AND WAS POSTED AT THE FRONT DOOR OF THE
COURT HOUSE OF SAID KANAWHA COUNTY, WEST VIRGINIA,

ON THE
30TH DAY OF MARCH , 1992 .

DATES PUBLISHED:

03/28/92 DAILY MAIL 04/04/92 DAILY MAIL

SUBSCRIBED AND SWORN TO BEFORE ME THIS

6TH DAY OF APRIL , 1992 .

James A. Hartman

NOTARY PUBLIC OF KANAWHA COUNTY, WEST VIRGINIA

PRINTERS FEE \$ 36.16

NOTICE OF PUBLIC HEARING

On Tuesday, May 5, 1992 beginning at 10:00 a.m. the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rule 45 CSR 5 - "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations."

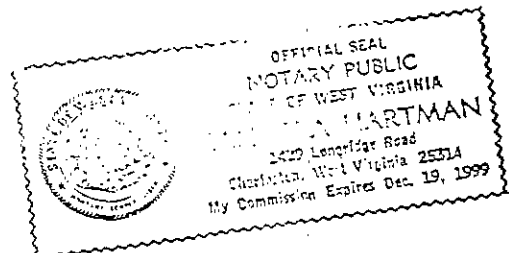
Upon authorization and promulgation, this legislative rule will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room, at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

The earlier hearing on this legislative rule scheduled for Friday, April 27, 1992, has been continued until the date previously outlined herein.

Copies of the proposed legislative rule are available for public review in the Library of the West Virginia Air Pollution Control Commission located at the address below:

G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311
(902770)



**AFFIDAVIT OF PUBLICATION
BECKLEY NEWSPAPERS INC.
BECKLEY, WEST VIRGINIA 25801**

April 10, 19 92

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Robert E. Zutaut being first duly sworn upon my oath, do depose and say that I am Advertising Manager of Beckley Newspapers Inc., a corporation, publisher of the newspaper entitled The Register-Herald, an independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily, for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of Public Hearing
(Description of notice)

was duly published in said newspaper once a week for one
successive week (Class I), commencing with the issue of the
6th day of April, 1992, and ending with the issue
of the 6th day of April, 1992, (and was posted at the

on the _____ day of _____); that said annexed
notice was published on the following dates: 4/6/92

_____ and that the
cost of publishing said annexed notice as aforesaid was \$ 16.73

Signed R. E. Zutaut
Robert E. Zutaut, Advertising Manager
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this
10th day of April, 19 92

My commission expires March 27, 2001
Diana L. Stone
Notary Public of Raleigh County,
West Virginia

R/H

COPY OF PUBLICATION

NOTICE OF PUBLIC HEARING:
On Tuesday, May 5, 1992 beginning at 10:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rule 45 CSR 5 - "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations."
Upon authorization and promulgation, this legislative rule will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air

Act.
The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.
The earlier hearing on this legislative rule scheduled for Friday, April 17, 1992, has been continued until the date previously outlined herein.
Copies of the proposed legislative rule are available for public review in the Raleigh County Public Library, P. O. Box 1876, Beckley, WV.
G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311
4-6-Mon-2-RH

RECEIVED
92 APR 20 AM 10:24
WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

**AFFIDAVIT OF PUBLICATION
BECKLEY NEWSPAPERS INC.
BECKLEY, WEST VIRGINIA 25801**

April 7, 19 92

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Robert E. Zutaut being first duly sworn upon my oath, do depose and say that I am Advertising Manager of Beckley Newspapers Inc., a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily, for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of Public Hearing
(Description of notice)

was duly published in said newspaper once a week for two
successive week (Class II), commencing with the issue of the
30th day of March, 1992, and ending with the issue
of the 6th day of April, 1992, (and was posted at the

on the _____ day of _____); that said annexed
notice was published on the following dates: 3/30, 4/6/92

_____ and that the
cost of publishing said annexed notice as aforesaid was \$ 29.28

Signed Robert E. Zutaut
Robert E. Zutaut, Advertising Manager
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this
7th day of April 19 92

My commission expires March 27, 2001
Alvin L. Stone
Notary Public of Raleigh County,
West Virginia

R/H

COPY OF PUBLICATION

NOTICE OF PUBLIC HEARING
On Tuesday, May 15, 1992, beginning at 10:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rule 45 CSR 5 - To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations.
Upon authorization and promulgation, this legislative rule will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air

000 LEGAL ADVERTISEMENT

Act
The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.
The earlier hearing on this legislative rule scheduled for Friday, April 17, 1992, has been continued until the date previously outlined herein.
Copies of the proposed legislative rule are available for public review in the Raleigh County Public Library, P. O. Box 1376, Beckley, WV.
G. Dale Earley, Secretary
West Virginia Air Pollution Control Commission
1558 Washington Street, East Charleston, West Virginia 25311
4-6-Mon-2-RH

45CSR5

SUMMARY

45CSR5 was promulgated by the Commission on July 26, 1968, and became effective on September 1, 1968. The purpose of this regulation is to prevent and control air pollution from the operation of coal preparation plants and coal handling operations. This regulation has been revised primarily to incorporate certain emergency rule revisions pursuant to PM_{10} replanning requirements under the 1990 amendments to the Clean Air Act (42 U.S.C.A. §7401 to 7671 q). Pursuant to 42 U.S.C.A. §7410 [CAA §110] and 42 U.S.C.A. §7513 [CAA §289], the State of West Virginia is responsible for providing to the United States Environmental Protection Agency ("USEPA") a state implementation plan ("SIP") for the Follansbee area, which is geographically defined in Section 6.3 of this legislative rule. The Follansbee area was designated by act of law as a nonattainment area for PM_{10} upon enactment of the 1990 Clean Air Act Amendments. PM_{10} is particulate matter suspended in the atmosphere which is less than ten micrometers in diameter measured aerodynamically. As part of the SIP, the State must include enforceable emissions limitations and specific strategies for control of PM_{10} in the Follansbee area. The aim of these legislative rule revisions or amendments is to strengthen particulate emission control requirements in Follansbee for coal handling operations by the provision of section 6.3. Sections 10.1, 10.3, and 10.4 of this proposed legislative rule are included to remedy a state-wide deficiency in specifying methodology for

enforcement of emissions standards that are necessary to implement the SIP for the Follansbee area.

Other changes to this legislative rule include the elimination of certain outdated requirements; the substitution of terminology from "smoke" to "particulate matter" and "opacity" readings; the addition of a monitoring section and operating permit section to better track emissions from coal handling operations and coal preparation plants; the elimination of a registration section to avoid redundancy as the operating permit section provides for listing of all such facilities; the addition of a construction, modification, and relocation permitting section that clarifies and assimilates other regulations of the Commission and eliminates contradictory provisions; and other minor changes in language and format to affect the above changes.

45CSR5

TITLE 45
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
AS PROMULGATED BY
WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

RECEIVED
1992 AUG 28 PM 2
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

§45-5-1. General.

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

1.2. Authority. -- W. Va. Code §16-20-5

1.3. Filing Date. --

1.4. Effective Date. --

§45-5-2. Definitions.

2.1. "Air Pollution", 'statutory air pollution' shall have the meaning ascribed to it in ~~section two~~ article twenty [§16-20-1 et seq.], chapter sixteen of the Code of West Virginia, as amended.

2.2. "Commission" shall mean the West Virginia Air Pollution Control Commission.

2.3. "Person" shall mean any and all persons, natural or artificial, including any municipal, public or private corporation organized or existing under the law of this or any other state or country and any firm, partnership, or association of whatever nature.

2.4. "Handling Operation" shall mean and include but not be limited to all coal grinding, crushing, picking, screening, conveying, storing, and stockpiling operations associated with the transport, production, or preparation of coal or coal refuse, excluding coal washing, drying, or air separation operations.

2.5. "Coal Preparation" shall mean and include but not be limited to all coal washing, drying or air separation operations used for the purpose of preparing the product for marketing.

2.6. "Plant" shall mean and include all equipment and grounds utilized in an integral complex for coal preparation and associated handling.

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

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

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

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

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

2.12. "Standard Cubic Foot" - One (1) cubic foot of dry gas, measured at standard conditions of 60 degrees F and 29.92 inches of mercury column.

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

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

~~2-15-"Smoke" shall mean small gasborne and airborne particles emitted from a stack in sufficient numbers to be visible.~~

~~2-16-~~2.15. "Ringelmann-Smoke-Chart" 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 Commission as the equivalent of said Ringelmann Scale.

~~2-17-~~2.16. "Fugitive Dust" shall mean any and all particulate matter generated, which, if not confined, would be emitted directly into the open air from points other than a stack outlet.

~~2-18-~~2.17. "Fugitive Dust Control System" shall mean 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.

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

Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in ~~section two~~ article twenty [\$16-20-1 et seq.], chapter sixteen of the Code of West Virginia, as amended.

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

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

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

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

3.1. No person shall cause, suffer, allow or permit emission of smokeparticulate matter into the open air from any stack which is as dark or darker in shade or appearance as that designated as No. 1 ~~on the Ringelmann Smoke Chart~~ or twenty (20) percent opacity, except as noted in subsection 3.2.

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

~~3.4. The equivalent opacity of these Ringelmann numbers in Sub-Section 3.1 and Sub-Section 3.2 of this Section shall be used as a guide in the enforcement of Section 4 and Section 5 of this Regulation.~~

~~3.5-3.4.~~ No person shall cause, suffer, allow or permit emission of smokeparticulate 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 ~~on the Ringelmann-Smoke-Chart~~ or twenty (20) percent-the-equivalent opacity-of-this Ringelmann-number.

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

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

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~~4.1.---Until September 2, 1971, thermal driers installed on or before March 1, 1970, shall not emit more than 0.15 grains of particulate matter per standard cubic foot of exhaust gas.~~

~~4.2:4.1.~~ After September 1, 1971, Thermal driers installed on or before March 1, 1970, shall not exceed the emission limitations of the following table:

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

~~4.3:4.2.~~ Thermal driers installed after March 1, 1970, but before October 24, 1974 shall not exceed the emission limitations of the following table:

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

4.3. Thermal driers which commenced construction or modification after October 24, 1974, shall meet emission limitations set forth under series sixteen [45CSR16].

4.4. For the volumetric flow rate between any two consecutive volumetric flow rates stated in subsection ~~4-24.1~~ and subsection ~~4-34.2~~, 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 Commission Chief 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, said drier(s) will be subject to the emission limitations of subsection ~~4-34.2~~ even though such modifications do not include the installation of a new thermal drier(s).

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

4.7. No person shall cause, suffer, allow or permit the exhaust gases from a thermal drier to be vented into the open air at an altitude of less than eighty (80) feet above the foundation grade of the structure containing the drier or less than ten (10) feet above the top of said structure or any adjacent structure, whichever is greater. In determining the desirable height of the above a plant stack, due consideration shall be given to the local topography, meteorology, the location of nearby dwellings and public roads, and the stack emission rate, and good engineering practice as set forth in Series 20 (45CSR20).

~~4.8. Any stack venting thermal drier exhaust gases into the open air shall contain flow straightening devices or a vertical run of sufficient length to establish flow patterns consistent with acceptable stack sampling procedures.~~

§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.

~~5.3. Any stack venting air table exhaust gases into the open air shall contain flow straightening devices or a vertical run of sufficient length to establish flow patterns consistent with acceptable stack sampling procedures.~~

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

6.1. No person shall cause, suffer, allow or permit a 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 the 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. Owners or operators of coal handling operations and 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

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south of the Market Street Bridge shall comply with the following fugitive dust control provisions:

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

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

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

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 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.

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

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.

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.

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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 6.3.c.1 of this rule.

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 Chief.

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.

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

§45-5-7. Monitoring of Operations.

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

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

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

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 gage.

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 Chief.

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

§45-5-7:----Registration.

7.1:-- Within thirty (30) days after the effective date of this regulation, all persons owning and/or operating coal preparation plants with the State shall have, registered with the Commission, on forms to be made available by the Commission, the name of the person, company or corporation operating the plant, the address, location, county, ownership (lessee & lessor), the principal officer of the company, and any other such reasonable information as the Commission may require, including, but not necessarily limited to, capacity of the plant, type of fuel used, plant operating schedule, description and capacities of thermal driers and air tables, height and size of stacks and air pollution control equipment.

7.2:-- Persons operating registered plants which are to be modified by changes in fuel burning equipment, fuel, fan capacity, drier design, air pollution control equipment, air tables, stacks or like changes which could significantly affect the emission characteristics of the plants shall file with the Commission those proposed changes not less than thirty (30) days before such changes are made.

7.3:-- Within thirty (30) days after the completion of the modifications as filed under Sub Section 7.2, the operator shall register such changes with the Commission on forms to be made available by the Commission.

7.4:-- Not later than sixty (60) days prior to operation, new plants shall be registered by the owner and/or operator of such plants. Such registration shall be made on forms to be made available by the Commission and will include the name of the person, company, or ownership (lessee & lessor), the principal officer of the company, and any other such reasonable information as the Commission may require including, but not necessarily limited to, data on the capacity of the plant, type of fuel to be used, description and capacities of thermal driers and air tables, height and size of stacks and description of air pollution control equipment.

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

8.1:-- Plants in existence on the effective date of this regulation will be granted temporary operating permits subject to compliance with Sub Section 7.1. These permits will be valid for as long as the Commission shall designate. When it is determined by the Commission that a plant meets the requirements of this regulation, the temporary permit will be replaced with an operating permit.

8.2:-- Any plant failing to maintain the requirements of this regulation shall, at the discretion of the Commission, have the permit revoked.

8.3:-- When permits are revoked, the Commission will reissue permits when such changes as necessary to meet the requirements of this regulation are made.

8.4:-- New plants will be granted temporary operating permits provided they comply with Sub Section 7.4.

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~~8.5. -- Subject to the provisions of Sub-Section 7.1, plants operating without a permit will be in violation of this regulation.~~

~~8.6. -- The possession of a permit by any person shall in no way relieve the holder thereof of his obligation to comply with the provisions of this regulation.~~

8.1. No person shall construct, modify, or relocate any coal preparation plant or coal handling operation without first obtaining a permit in accordance with the provisions of article twenty [§16-20-1 et seq.], chapter sixteen of the Code of West Virginia, as amended, and the Commission rules for review and permitting of new or modified sources. The terms "construction", "modification" and "relocation" shall have the meaning ascribed to them in 45CSR13.

§45-5-9. Operating Permits.

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

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

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

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

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

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

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9.4. No owner or operator of a coal preparation plant or coal handling operation shall be deemed to be in violation of this Section during the pendency of the Chief's 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.

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

9.6. The possession of a permit by any person shall in no way relieve the holder thereof of the obligation to comply with the provisions of this or any other rule or Code §16-20.

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

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

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

§45-5-9:§45-5-10. Reports and Testing.

9-1-10.1. At such reasonable times as the DirectorChief 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. ~~when the Director has reason to believe that the stack emission limitation is being violated. Such tests shall be conducted in such manner as the Director may specify and be filed on forms, and in a manner acceptable to the Director. The Director, or his duly authorized representative, may at his option witness or conduct such stack tests.~~ All tests to determine compliance with exhaust gas dust concentrations and particulate matter mass emission rates shall be conducted in accordance with Methods 1-5 of 40 CFR 60, Appendix A as promulgated by USEPA on July 1, 1991 provided that all compliance tests must consist of not less than three (3) test runs, test run duration shall not

be less than sixty (60) minutes, and not less than thirty (30) standard cubic feet of exhaust gas must be sampled during each test run. Should the Director/Chief 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/Chief 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.

9-2-10.2. The Director/Chief, 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 9-1-10.1.

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

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

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

b. In determining a violation of Section 3.2, the observer shall record not less than 24 nor more than 240 visible emissions observations at 15 second intervals for each test and shall total the number of observations exceeding 20% opacity. More than 20 consecutive or nonconsecutive observations exceeding 20% opacity recorded within any 60 minute period shall constitute a violation except as provided in Section 10.4.c.

c. More than 32 consecutive or nonconsecutive visible emissions observations during any period or periods within one day in which an owner or operator of a thermal dryer is initiating and stabilizing operating combustion conditions in the furnace the thermal dryer shall constitute a violation of Section 3.3 of this rule.

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

§45-5-10-§45-5-11. Variance.

~~10.1. If a plant operating under a temporary permit does not meet the requirements of this regulation, the operator of the plant shall develop and submit to the Commission an acceptable control program to meet these requirements. This control program shall be submitted upon the request of and within such time as shall be fixed by the Commission; and after said program has been approved by the Commission, the owner or operator of the plant will not be in violation of this regulation as long as said program is observed.~~

~~10.2.11.1. Due to unavoidable malfunctions of equipment or nonavailability of repair parts, emissions exceeding those provided for in this rule may be permitted by the Commission upon specific application to the Commission Chief, upon specific application to the Chief, for periods not to exceed ten (10) days. Such application shall be made within twenty-four (24) hours of the malfunction or within such other time period as the Commission may specify.~~

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

11.3. Any person, whose interest may be affected by the granting of a variance in excess of ten (10) days and who requests a conference with the Chief pursuant to the provisions of 11.2 of this section, may appeal an order of variance to the Commission in the same manner as appeals of cease and desist orders under the provisions of W. Va. Code §16-20-6.

§45-5-12. Transfer of Permits.

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

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

45CSR5

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

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



Ken Hechler
Secretary of State

WEST VIRGINIA REGISTER

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Volume IX

Issue 2

January 10, 1992

Pages 52-110

A Weekly Publication

Administrative Law Division

Judy Cooper
Director

Patty Hines
Administrative Assistant

Secretary of State
Administrative Law Division
State Capitol
Charleston, WV 25305

(304) 345-4000

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CHRONOLOGICAL INDEX VOLUME IX ISSUE 2

Proposed Rules Filed for Public Hearing

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Air Pollution Control Commission	Prevent & Control Air Pollution from the Operation of Coal Preparation Plants & Coal Handling Operations Legislative	\$29A-3-1	March 6, 1992, 9:00 a.m. WV Air Pollution Control Comm. 1558 Washington Street, E Charleston, WV 25311 Written Comments: Same as Above
Public Service Comm.	Rules & Regs for the Government of Telephone Utilities Legislative	\$24-1-1	March 6, 1992, 4:00 p.m. Written Comments Only: Howard M. Cunningham, Ex. Sec. Public Service Commission P. O. Box 812 Charleston, WV 25323
Public Service Comm.	Rules & Regs Governing the Management, Transportation & Flow Control of Solid Waste & Recyclable Materials Generated in WV	\$24-1-7	March 9, 1992, 4:00 p.m. Written Comments Only: Same as Above
Workers' Comp. Office of Judges	Workers' Compensation Office of Judges - Hearings Procedural	\$23-4-8C	February 7, 1992, 4:30 p.m. Written Comments Only: Robert J. Smith Chief Administrative Law Judge Workers' Compensation Office of Judges P.O. Box 2233 Charleston, WV 25328

EMERGENCY RULES FILED

<u>AGENCY</u>	<u>RULE</u>	<u>AUTHORITY</u>	<u>EFFECTIVE DATE</u>	<u>NOTICE FOR HEARING BY</u>
Public Safety	Modified Vehicle Inspections	\$17C-15-48(i)	ERD by Feb. 7, 1992	December 4, 1991

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WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
Form #1

LEGISLATIVE
WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
Form #4

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Air Pollution Control Commission TITLE NUMBER: 45 CSR 5
RULE TYPE: Legislative; CITE AUTHORITY WV Code §29A-3-1
AMENDMENT TO AN EXISTING RULE: YES NO
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45 CSR 5
TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution
from the Operation of Coal Preparation Plants and Coal Handling Operations"
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____
TITLE OF RULE BEING PROPOSED: _____

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Department of Health and Human Resources TITLE NUMBER: 64
CITE AUTHORITY §16-1-7
AMENDMENT TO AN EXISTING RULE: YES NO
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 20
TITLE OF RULE BEING AMENDED: Retail Food Store Sanitation
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____
TITLE OF RULE BEING PROPOSED: _____

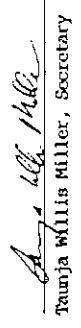
DATE OF PUBLIC HEARING: March 6, 1992 TIME: 9:00 a.m.
LOCATION OF PUBLIC HEARING: WV Air Pollution Control Commission
1558 Washington Street, East
Charleston, WV 25311

COMMENTS LIMITED TO: ORAL, WRITTEN, BOTH X
COMMENTS MAY ALSO BE MADE TO THE FOLLOWING ADDRESS: same as above

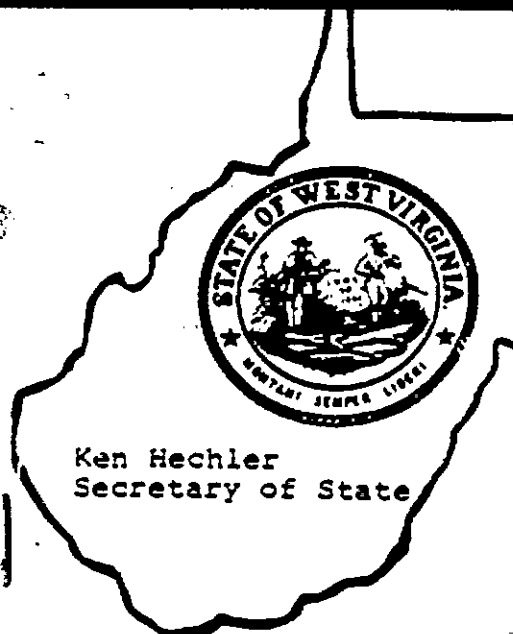
The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.
The issues to be heard shall be limited to the proposed rule.


G. Dale Farley
Director

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


Tanja Willis Miller, Secretary

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL



Ken Hechler
Secretary of State

WEST VIRGINIA REGISTER

Volume IX

Issue 9

February 28, 1992

Pages 414-468

A Weekly Publication

Administrative Law Division

Judy Cooper
Director

Patty Hines
Administrative Assistant

Secretary of State
Administrative Law Division
State Capitol
Charleston, WV 25305

(304)345-4000

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LEGISLATIVE

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

FILED

1992 FEB 25 11 25

STATE OF WEST VIRGINIA

ADMINISTRATIVE LAW DIVISION

Form #5

KEN HECHLER

FILED

1992 FEB 25 11 3 29

STATE OF WEST VIRGINIA

NOTICE OF CONTINUANCE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Air Pollution Control Commission TITLE NUMBER: 45 CSR 5

RULE TYPE: Legislative; CITE AUTHORITY: WV Code §29A-3-1

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45 CSR 5

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

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

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: April 17, 1992 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: WV Air Pollution Control Commission, 1558 Washington Street, East Charleston, WV 25311

COMMENTS LIMITED TO: ORAL _____, WRITTEN _____, BOTH _____
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Same as above.

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.

Handwritten signature
G. Dale Farley, Director

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

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

CITE AUTHORITY: WV Code 18A-3-1a

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW _____

AMENDMENT TO AN EXISTING RULE: YES _____, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: Series 161 (Policy 5901)

TITLE OF RULE BEING ADOPTED: Alternative Programs for the Education of Teachers

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS March 25, 1992

Handwritten signature
February 24, 1992



Ken Hechler
Secretary of State

WEST VIRGINIA REGISTER

Volume IX

Issue 13

March 27, 1992

Pages 615-663

A Weekly Publication

Administrative Law Division

Judy Cooper
Director

Missy Phalen
Administrative Assistant

Secretary of State
Administrative Law Division
State Capitol
Charleston, WV 25305

(304)345-4000

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WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

NOTICE OF CONTINUANCE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Air Pollution Control Commission TITLE NUMBER: 45 CSR 5
RULE TYPE: Legislative; CITE AUTHORITY: WV Code §29A-3-1

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45 CSR 5

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

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

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: May 5, 1992 TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: WV Air Pollution Control Commission

1558 Washington Street, East

Charleston, WV 25311

COMMENTS LIMITED TO: ORAL, WRITTEN, BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Same as above.

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.

WEST VIRGINIA DEPARTMENT OF PUBLIC SAFETY

DIVISION OF CORRECTIONS

CENTRAL OFFICE
112 California Avenue
Charleston, West Virginia 25305

MAR 23 1992

MEMORANDUM

FILED
1992 MAR 24 PM 1:55

TO: Central Office Administrative Staff,
Wardens, Superintendents, Administrators, and
Director Corrections Academy

FROM: William R. Whyte, *W. Whyte*
Deputy Commissioner Operations

DATE: March 10, 1992

RE: Policy Directive 413.01 - Correctional Officer Promotion

Attached is the correct page number six of the referenced policy directive. Please check all policy directive manuals at your location to insure the correctness of this particular policy and replace page number six if necessary.

At some point, a copy of page number six of the draft policy made its way into some of the policy manuals and the updated version did not. This has created some confusion among facilities concerning how many college hours are needed to credit 1 point for formal education toward correction officer promotions.

Please note: As described on page six, under section number 5 (Formal Education), the correct number of points should be one (1) for each nine (9) hours of college credit, with a maximum of 10 points possible.

WHW/bjh

cc: George Trent
Filer PD92-01



Ken Hechler
Secretary of State

WEST VIRGINIA REGISTER

Volume IX

Issue 17

April 24, 1992

Pages 831-882

A Weekly Publication

Administrative Law Division

Judy Cooper
Director

Missy Phalen
Administrative Assistant

Secretary of State
Administrative Law Division
Bldg. 1, Suite 157K
1900 Kanawha Blvd. E.
Charleston, WV 25305-0770

(304)558-6000

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West Virginia Department of
Commerce, Labor & Environmental Resources
Air Pollution Control Commission

1558 Washington Street, East
Charleston, West Virginia 25311

Telephone: (304)348-4022
or (304)348-3286
Fax: (304)348-3287

AGENDA

WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION
Conference Room

1558 Washington Street, East
Charleston, West Virginia 25311

May 5, 1992
8:30 a.m.

I. CONSIDERATION OF PROPOSED CONSENT ORDERS FOR REGULATION 27
(45CSR27) COMPLIANCE PLANS

1. Union Carbide Chemical & Plastics Co., Inc./Institute Plant - Proposed Consent Order for Regulation 27 Compliance Plan
2. Rhone Poulenc Inc./Institute - Proposed Consent Order for Regulation 27 Compliance Plan

II. CONSIDERATION OF PROPOSED CONSENT ORDERS

1. ITAPCO - Parkersburg, Inc./Vienna - Proposed Consent Order
2. N.B. Partners Limited Ease/NMI, Inc., General Partners/Bayard - Proposed Consent Order
3. Wampler-Longacre Chicken, Inc./Harrisonburg - Proposed Consent Order
4. Steel of West Virginia, Inc./Huntington - Proposed Consent Order
5. Peerless Block & Brick Company/St. Albans - Proposed Consent Order
6. Peabody Coal Corp. (Eastern Associated Coal Corp.)/Montcoal - Proposed Consent Order

III. PUBLIC HEARING (beginning at 10:00 a.m.)

Hearing on Proposed Revisions to Regulation 5 (45CSR5) - "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations"

IV. COMMISSION MEETING

1. Consideration of Minutes of September 12, October 30, and November 14, 1991 meetings.
2. Director's Comments.
 - o Discussion of Changes to the Air Pollution Control Law and Required Regulations Pursuant to the Code Revisions.

Penalties and Enforcement Confidentiality of Information.
 - o Discussion of Requirements to Control Fugitive Emissions Sources in Regulation 27 Compliance Plans.
 - o Discussion of Required Operating Permit Program Development to Meet Clean Air Act Requirements.
 - o Discussion and Consideration of Draft Legislative Rules:

Proposed Amendments to 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"

Proposed Amendments to 45CSR19 - "Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants"

Draft 45CSR28 - "Regulations to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds From Vehicle Refueling Emissions at Gasoline Dispensing Facilities"

Draft 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions"
3. Such other business as the Commission deems timely and appropriate.

MAY 5, 1992 COMMISSION MEETING

REGISTER

Date	Name	Address	Company Affiliation
05/05/92	IVAN CLARK	1125 17th St., Suite 1900 Denver, CO	R.W. Beck & Assoc
	Walter Ruff	P.O. Box 2 BAYARD, WV	U.B. PARTNERS, LTD
	A. TOKARZ	P.O. Box 1386 Charleston W. Va	N. B. Litton Ltd
	Dan Moreland	Huntington	Steel of West Virginia
	D. Whitson	Parkerburg	I & A P Co.
	R. J. Mithner	First-Gen Plant Charleston, WV P.O. Box 2831 25332	Rhine-Powder Cycle
	J R BOGAN	INSTITUTE PLANT	UCCAP
	B.E. SMITH	"	"
	R C BRANDON	"	"
	K. B. Poland	Charleston, WV	Robinson + McElwee

MAY 5, 1992 COMMISSION MEETING

REGISTER

Date	Name	Address	Company Affiliation
05/05/92	Allen Fisher	2301 Chas WVA	STATE Bldg TRADES AFFILIATED CONST'R. A.C.T.
	Stuart Calwell	405 Capital St. #908	lawyer - ACT
	D. Garrison	P.O. Box 1741	Robinson & McElwaine
	Chris Burkett	2905 3rd Ave Vanna WV	Schuller
	Steve Meyer	"	"
	Naghe Hellum		Calwell, McConnick
	Patrick McElroy	70 Hilltop Lenoir, N.S.	CETA
	Woodward Peace	P.O. Box 346 Harrisonburg, Va	WLP Foods
	R. C. LOCKEMER	BOX 2831 CHARLESTON, WV 25330	RHONE-POULENC
	E Z Hogan	Oldroy w Co	E Z Hogan Metals Co.

MAY 5, 1992 COMMISSION MEETING

REGISTER

Date	Name	Address	Company Affiliation
05/05/92	ROBERT J. ROBINSON	P.O. Box 2021 Roanoke, VA 24022	Appalachian Power Co
	Ron Ammer	901 Anthony Rd Belle, WV	Drapac
	Wendy Radcliff	1524 Virginia Street East Charleston WV 25301	WV-CAG
	CLARENCE WALLER	500 LEE ST 25324 Charleston	PEABODY
	Tom CLARKE	500 LEE ST 25324 Charleston WV	PEABODY
	Chuck Hewett	P.O. Box 24400 Canton OH 44701	Ohio Power
	Mussy Woolberton	1324 Virginia St. E.	WV-CAG
	BOB ARSONS	JACKSON & KELLY	APCO
	SCOTT ICARD	CHAS	APCO
	Bill Ranney	Ebas	WUCA

MAY 5, 1992 COMMISSION MEETING

REGISTER

Date	Name	Address	Company Affiliation
05/05/92	Chris [unclear]	1301 Lanolky Tower	W & Carol area
	Bob Foster	1012 KANAWHA BRID Charleston	Ches. Ryan Assoc.
	JACK [unclear]	CHRS	WUPC

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED



Consolidation Coal Company
Consol Plaza
Pittsburgh, Pennsylvania 15241-1421

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92 FEB 21 10:57

WEST VIRGINIA
AIR POLLUTION CONTROL
COMMISSION

WV Air Pollution Control Commission
1558 Washington Street, East
Charleston, WV 25311

February 21, 1992

Re: Comments on Revision to 45 CSR 5-"To Prevent and Control
Air Pollution From the Operation of Coal Preparation
Plants and Coal Handling Operations"

Dear Members of the Commission:

This letter is in response to publication of a proposed amendment to legislative rule 45 CSR 5, by the West Virginia Air Pollution Control Commission entitled "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations."

The CONSOL Coal Group, including Consolidation Coal Company, is the largest coal producer in West Virginia, with active operations in Harrison, Marion, Marshall, McDowell, Monongalia, and Raleigh Counties. We operate approximately ten preparation plants located within West Virginia. As such the proposed rule referenced above is very important to us. We are limiting our comments in this letter to four issues: (1) questioning the efficacy of placing the Follansbee non-attainment fugitive dust control provisions in this rule; (2) clarifying when an operating permit is required; (3) suggesting a period of notification before suspending or revoking an operating permit; and (4) questioning the proposal to disallow averaging in the measurement of visible emissions.

The proposed revisions contain a new regulation, Section 45-5-6.3 which provides for comprehensive and detailed fugitive dust controls in a small geographical area of Brooke County. According to the Summary, the U.S. EPA has determined that this area is non-attainment for particulate matter as measured by PM-10. We understand West Virginia must adopt specific strategies and enforceable emissions limitations to strengthen the particulate emission control requirements in Follansbee. Since the CONSOL Coal Group does not operate a facility within this non-attainment area, we

will refrain from commenting on the substantive requirements of this subpart [6.3]. We do question the appropriateness of placing these very specialized rules in a generic rule. Since this subpart has extremely limited geographical applicability, we believe that they logically belong in a separate rule exclusively addressing the non-attainment area. We assume there are other source categories located within the non-attainment area. Presumably, it is also necessary to amend the rules regulating these other sources to have a comprehensive strategy for reducing particulate matter emissions. Accordingly, we feel it would be more efficient to consolidate all of these special provisions into one new rule addressing the non-attainment problem.

In the new Rule 45-5-9 Operating Permits, the first subpart [9.1] is contradictory. It says that No person shall operate any coal preparation plant or handling operation without an operating permit. It then says that a person does not have to submit an application for an operating permit until 120 days after the Director requests such application in writing. We read this language to mean that an operating permit is not required until the Director requests one, which would seemingly put an operator in violation of the first sentence. It would also seem to require an existing source to cease operations until the Director requested the source to submit an application. We feel that this section is confusing and would urge the Commission to consider rewording it. This rule should clearly state the duties of the operator and the Director.

Also in the new Rule 45-5-9 Operating Permits, the second subpart [9.2] is too harsh. It does not provide for notice of suspension or revocation of the operating permit by the Director. The CONSOL Coal Group believes that the Director should notify the permittee that a violation exists before acting to suspend or revoke the operating permit. The proposed revisions make a suspension or revoking of the permit equivalent to a cease and desist order. We feel that the operator should be afforded the opportunity to show cause why the permit should not be suspended or revoked. The Director already has other authority and powers to cause an operator to shut down his facilities immediately in an emergency situation. We suggest rewording 45-5-9.2 along the lines of the following:

"9.2 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 willfully violating

the provisions of this regulation, the Director shall issue an order to the permit holder directing the permit holder to show cause why the permit should not be suspended or revoked. The show cause order shall describe specifically the violation which the Director believes is occurring and shall set a time and place for a hearing before the Director, or before a hearing officer designated by the Director, at which hearing the permit holder shall have the opportunity to respond to the order. Such hearing shall be held no earlier than three days after the show cause order is served on the permit holder. Following such hearing, the Director shall issue a final decision within seven days either suspending or revoking the permit or stating that the permit holder has shown adequate cause why the permit should not be suspended or revoked. If the permit is suspended or revoked, such order shall be considered a cease and desist order for purposes of administrative and judicial review."

As amended, this provision would give a permit holder time to consult an attorney before his operations are shut down. There may be justification for allowing immediate cease and desist orders in cases where continued operation would pose an immediate threat of significant harm to public health or safety or to the environment; but a regulation authorizing immediate shut-down of a facility merely because the Director believes that there may be a willful violation occurring is clearly a punitive regulation. The public interest is not sacrificed to any extent if the permit holder is given notice that he has a problem and an opportunity to respond to his accuser.

Lastly, new subpart 10.5 of Rule 45-5-10 Reports and Testing, proposes to follow Method 9 of 40 CFR 60, Appendix A as promulgated by U. S. EPA on July 1, 1991, for the measurement of opacity to ascertain compliance with the visible emission limitations, except that visible emissions measurements shall not be averaged. This is a significant deviation from the accepted Reference Method. Visible emission measurements require averaging in at least two important ways. First, each of the individual 15 second observations is an average of the opacity during that 15 second interval. Secondly, the Reference Method requires a minimum of 24 individual observations (one observation every 15 seconds over a 6

minute period--4x6=24) for a valid test. To obtain one number to compare to the appropriate visible emission standard requires reducing the 24 individual observations into one average opacity. This is accomplished mathematically by totaling the 24 observations and dividing by 24 (forming a simple arithmetic average) to obtain a single opacity measurement. The Commission should understand that opacity measurements made by human observers are semi-quantitative at best. The EPA Reference Method has been perfected over several decades to give regulators and the regulated community a tool that eliminates as much as possible any subjectivity in making measurements of opacity. Averaging, as described above is an important element in reducing human observer error and should be retained. We think the Commission should allow averaging. In the alternative, the Commission should at least explain in some detail why it is proposing to disallow averaging.

The CONSOL Coal Group appreciates the opportunity to comment on the proposed revisions to 45 CSR 5 and answer any questions our comments might raise.

Sincerely,



Richard L. Kerch
Director, Air and Water Quality Activities

POCAHONTAS COAL SALES, INC.

INDUSTRIAL PARK ROAD — ROUTE 9, BOX 8

BEAVER, WEST VIRGINIA 25813

PHONE (304) 253-5876



March 19, 1992

G. Dave Farley, Secretary
WV Air Pollution Control Comm.
1558 Washington Street, East
Charleston, WV 25311

RE: Rule 45CSR5
Air Pollution Control
Coal Handling Operations

Dear Mr. Farley:

This letter contains comments and conditions affecting implementation of the above Rule 45.

Pocahontas has been in business 17 years, primarily the coal handling side of the coal industry. We have one rail loadout active, one inactive and have run two cleaning plants in the past, plus have purchased or sampled coal at most all of the southern West Virginia mines.

We have watched the DNR evolve from a fish and game organization thru Department of Energy to its current Environmental Protection status. Their frequency of monitoring and sophistication has increased exponentially. With the assistance or threat of the Office of Surface Mines our state people do an excellent job of protecting the environment, which includes fugitive dust.

Also, the Department of Labor, Mine Safety Health Administration conducts dust samples. Pocahontas also hires an independent consultant to test for dust. This is dust that our employees are subject to, which gives some indication of how much fugitive dust is at issue. Small raw coal loadouts have little impact on the environment, certainly less than a local farm might have.

New emphasis of an old law will add dramatically to the paper work, monitoring and mechanical changes, i.e., truck washes then water treatment for the truck wash water. All of which add to the cost and subtract from productive time without additional protection of the environment.

Mr. G. D. Farley
March 19, 1992
Page 2

If the state must find additional responsibilities for inspectors let us correct the iron and acid seeps, the exposed coal and highwalls on the state and federal highways. Let them show farmers how to construct ditches and sumps to keep sediment, nitrogen, weed killer and insecticides out of our ground water and streams. Let them check automobiles for emissions. Let them investigate garbage dumped on our backroads. Let them be productive in the protection of our environment.

Sincerely,



Robert R. Bowling
President



West Virginia Department of
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Air Pollution Control Commission

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West Virginia Air Pollution Control Commission
Proposed Revisions to 45CSR5

On March 25, 1992 the WVAPCC filed proposed revisions to its Regulation 5 (45CSR5) - "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations" and in accordance with §16-20 placed Class II legal advertisements for a June 5, 1992 hearing in one newspaper published in each of the ten designated Air Quality Control Regions of West Virginia. The proposed revisions to 45CSR5 had been originally filed on January 6, 1992 for a public hearing on March 6, 1992. Subsequent to re-filing of the proposed rule amendments the hearing was continued to May 5, 1992.

Following the first notice of the rule changes on January 6, 1992 and until the close of the public comment period on June 4, 1992 the Commission received two written comment letters attached to this summary:

A letter of February 21, 1992 was received from Richard Kerch of Consolidation Coal Company. A letter of March 19, 1992 was received from Robert Bowling of Pocahontas Coal Sales, Inc.

Comments were also received from the following individuals at the May 5, 1992 hearing as documented in the attached hearing transcript and summarized herein:

Chuck Hewitt - Ohio Power Company
William Raney - West Virginia Coal Association
Robert Parsons - Jackson & Kelly

At the May 5, 1992 hearing G. Dale Farley, Director of the Air Pollution Control Commission and Randall Suter of the Commission's staff summarized the proposed changes to 45CSR5 and explained that some of the changes had been deemed to be emergency changes necessitated by a requirement to revise the West Virginia Implementation Plan under the Clean Air Act as a result of violations of the National Ambient Air Quality Standards for Particulate Matter in the area of Follansbee, West Virginia. Public comments were then received.

Summary of Public Comments and Agency Responses

1. The purpose and appropriateness of including special new dust control provisions for facilities in the Follansbee non-attainment area was questioned.

Response: The APCC negotiated Consent Orders containing new or more detailed particulate emissions control measures with all but one of the West Virginia companies operating in or affecting the small Follansbee area for which a new

Implementation Plan was required. These orders were submitted to USEPA to satisfy a November 1991 deadline for the new area plan. One company in the area which owns a currently inactive coal loading dock refused to enter such a consent order necessitating "emergency" changes to APCC Regulation 5 (45CSR5) to demonstrate sufficiently stringent coal dust control measures to assure attainment of the national and state air quality standards. Limited revisions to this single existing rule (45CSR5) already pertaining to coal handling operations were deemed to be the most expeditious approach in dealing with this Implementation Plan deficiency.

2. One commentor questioned the language at Section 9.1 indicating that the wording was confusing.

Response: The DEP/OAQ staff agreed that the Section 9 language as first proposed was confusing and, subsequent to discussion of the issue by the Commission at the May 5, 1992 hearing, revised and expanded Section 9.0 in its entirety to clarify the section's purpose.

3. Section 9.2 as originally drafted was believed to be too harsh in the apparent manner in which the Director (now Chief of Air Quality) could suspend or revoke an operating permit.

Response: After the proposed revisions to 45CSR5 were drafted and filed, the Legislature amended Code §16-20 including enactment of new procedures to be followed in permit suspension or revocation. This Code change and a parallel language change in the original rule proposal are believed to address the commentor's concerns.

4. Two commentors questioned the proposed language to prohibit averaging of visible emissions (opacity) observations and suggested different approaches for consideration.

Response: This matter was discussed with the Commission at length with DEP/OAQ staff informing the Commission of the prior APCC Director's interpretation of the manner in which the visible emission standards should be interpreted and enforced (non-averaging). Based upon comments received and receipt of the Commission members' views on this issue, the DEP/OAQ staff revised Section 10 to specify minimum and maximum test durations, allow opacity averaging and to clarify how the visible emission exception periods are to be enforced.

5. The representative of the West Virginia Coal Association (William Raney) raised several questions or issues:

°What constitutes a "modification" under Section 8?

Response: The term modification is specifically defined in 45CSR13 to mean any physical change or change in the method of operation of an existing affected source (facility) which increases the discharge of any air pollutant or results in a new emission of an air pollutant for which the Commission has promulgated an emission or ambient air quality standard. Proposed 45CSR5 was revised by the

addition of a clarifying sentence in Section 8.1 which referenced 45CSR13 definitions for "construction", "modification", and "relocation".

°Whether there should be thresholds (presumably facility size or emissions) for issuance of permits.

Response: Existing 45CSR5 establishes no thresholds for regulation (e.g. dust control requirements) for coal preparation plants and coal handling operations. The proposed rule revisions eliminate the existing registration and permitting requirements in favor of operating permits only, but extends operating permits to coal handling operations as well as preparation plants. Since the regulation has always required dust control measures at both types of facilities a permit system appears to be appropriate to keep track of both types of operations.

At Section 10.1 there was a question raised as to what constitutes "reasonable" times for requirement of stack tests.

Response: New facilities such as coal thermal driers require by rule initial stack testing within a prescribed time-frame from startup. Tests on existing facilities may be required when visible emissions or process observations by OAQ staff indicate that emission standards may be violated or when facility performance is obviously poor. The air agency may implement compliance monitoring schedules requiring periodic re-testing of facilities such as thermal driers. Such test requirements have historically been infrequent.

6. One commentor questioned whether the proposed changes meant getting an additional permit and paying additional fees.

Response: Although the nature of the permit document may change and a new permit application would be required under the proposed rule revisions, they do not change the current requirements for coal preparation plants under this rule or involve any changes to permit fees. The proposed revisions would extend the operating permit requirements to coal handling operations in addition to coal preparation plants as defined by the rule.

Other Issues Raised in Commission Consideration of the Proposed Rule

1. Several Commissioners questioned the 120 day period allowed for submission of permit applications (Section 9) and commented that they believed this to be too long a period for all applications.

The time-frame for submission of all permit applications was shortened to 90 days from the effective date of the rule changes. This would allow two to four weeks for agency mailing of application forms and receipt by industry and two months to submit an application.

2. Chairman L. Newton Thomas questioned the definition of "willful" as it was used in Section 9.2 as first proposed. This was discussed at some length with

agency Counsel, Larry Kopelman initially expressing an opinion that a showing of "willful" violations would be necessary for permit revocation. A subsequent review of amendments to Code §16-20 indicates that violations do not have to be willful to justify permit suspension or revocation. The DEP/OAQ staff accordingly recommended deletion of the word "willfully" from Section 9.5 (originally 9.2) of the redrafted rule considered by the Commission at its June 23, 1992 meeting.

3. Chairman Thomas and subsequently one of the commentators questioned the specificity of control measures for Follansbee coal handling operations in Section 6.3. A question was raised about conflicts with §16-20 in that regard.

Accordingly, at 6.3.c.1 and 6.3.c.4 language was added to allow application of equivalently effective dust control measures as those outlined in the proposed revisions.

4. Several Commissioners indicated a need to include language clarifying any fee requirements or linkage to other regulations containing such requirements.

Section 9.8 was added to satisfy these comments.

5. The life or term of the operating permit was discussed with Commission Chairman Thomas advocating an indefinite term involving renewal only as necessary to incorporate newly applicable requirements.

Section 9.9 was added to satisfy this comment.

6. It was suggested that a section or provision be added to clarify permit transfer procedures.

Section 12 was added to satisfy this comment consistent with other existing rules.

7. A suggestion was made to change the word "shall" to "may" in the third sentence of revised Section 9.5 to make permit revocations discretionary with the Director (now Chief) rather than mandatory. This change was made in the final proposed rule.

8. A suggestion was made to add a provision clarifying that the Director (now Chief) may renew or reissue a permit which had previously been revoked. Such language was added to Section 9.5 of the final proposed rule.

9. Commission Chairman L. Newton Thomas questioned whether relief could be provided to anyone relative to the requirement in Section 10.5 concerning stack gas flow straighteners or stack design for testing.

The DEP/OAQ staff reviewed this matter and does not believe that there is any acceptable and credible method for determining particulate emissions under cyclonic stack gas flow conditions.

10. The Commissioners, in light of the Governor's Executive Order 8-92, requested that the title of this rule be changed to reflect the present realities of organizational structure.

The title of the rule changed from "Air Pollution Control Commission" to "Division of Environmental Protection as Promulgated by West Virginia Air Pollution Control Commission".

11. The Commissioners, in light of the Governor's Executive Order 8-92, concurred with the attached "Staff Response to the Governor's Executive Order 8-92" and requested that proper changes be made.

Changes were made to nomenclature to reflect the position of the referenced "Response".

12. The Commissioners requested that Section 6.3.c.2 be clarified. The words "to the Chief" are moved from after the words "monthly reporting" and inserted after the words "control measures".

13. The Commissioners and Attorney Kopelman expressed concern that the APCC promulgated the rules but that the rules were actually rules of the Division of Environmental Protection.

Terms such as "rules of the Commission" were changed to "rules" throughout the course of 45CSR5.

14. The Commission expressed concern that the long-term variance language provided by Section 11.1 as proposed is inadequate. Long-term variance (in excess of ten (10) days) and an appeal procedures for those affected by the granting of such a variance were made part of the rule by the addition of sections 11.2 and 11.3.



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WVAPCC Staff Response to the Governor's
Executive Order 8-92
(Effective July 1, 1992)

As a result of the Governor's Executive Order 8-92, questions have arisen as to the proper nomenclature for administrative functions. As of the effective date of the Executive Order (July 1, 1992):

"the name of the Division or the Director (of DEP), as may be appropriate, shall be deemed substituted for the name of the predecessor office or official in the Code; in any legal instrument or proceeding, including but not limited to existing agency rules, regulations or guidelines . . ." (Executive Order 8-92, Section 7(b)).

Revisions to rules and rules not in existence which are promulgated after the effective date of the Executive Order need to use current terminology.

Therefore, definitions of "Chief of Air Quality", "Division of Environmental Protection", and "Director" have been added or changed to reflect the status of operations since the implementation of the Executive Order.

In addition, in all areas where the term "Director" was previously used the term "Chief" or "Chief of Air Quality" is currently used. The term "Chief" or "Chief of Air Quality" has also been substituted for the term "Commission" in those areas which are not part of the Commission's appellate or rule-making authority.

WEST VIRGINIA DEPARTMENT OF
COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
AIR POLLUTION CONTROL COMMISSION

RECEIVED

MAY 27 1992

AIR POLLUTION
CONTROL COMMISSION

IN RE: Public Hearing on Proposed Revisions to
Regulation 5 (45CSR5) - To Prevent and
Control Air Pollution From the Operation
of Coal Preparation Plants and Coal
Handling Operations

TRANSCRIPT OF PROCEEDINGS had and/or
testimony adduced in the hearing held before the West
Virginia Air Pollution Control Commission in the
Conference Room at 1558 Washington Street, East,
Charleston, Kanawha County, West Virginia, on the 5th day
of May, 1992, commencing at 10:25 a.m.

BEFORE: L. NEWTON THOMAS, Chairman
CREDE DOUGLASS, Vice Chairman
CLEVE BENEDICT
JEAN C. NEELY
JOSEPH P. SCHOCK
SAMUEL KUSIC
G. DALE FARLEY, Director
LARRY KOPELMAN, Special Assistant A.G.

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(304) 988-9581

I N D E X

<u>Witnesses:</u>	<u>Direct</u>
Chuck Hewett	57
Bill Raney	63
Bob Parsons	66

Reporter's Certificate77

P R O C E E D I N G S

(10:25 A.M.)

CHAIRMAN THOMAS: Let us now convene the public hearing of the West Virginia Air Pollution Control Commission. Let the record indicate that the forum of the Commission is present with the attendance of Commissioners Sam Kusic, Joe Schock, Jean Neely, Cleve Benedict, Crede Douglass, and Newton Thomas.

Further, I might indicate that we have a Court Reporter with us today, Donna Miller, who will transcribe the proceedings. Those wishing a copy of the proceedings of this hearing should contact Ms. Miller directly.

The subject of the hearing this morning will be the proposed revisions to Reg 5, to Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations.

I will turn now to the Director to make any comments that you wish at this time.

MR. FARLEY: If the Commission will recall, back in November as a part of the ^{PP 10} ~~hint and~~ implementation plan that was put together and submitted to

the EPA for the Follansbee area, that plan was predominantly built on existing regulations with consent orders to lock in housekeeping type requirements for road dust control.

The only place the Commission did an emergency adoption of certain provisions to a regulation was in Reg 5, and that was to add a section specifically dealing with requirements for coal handling operations in that small Follansbee area.

Also, we made changes and inserted some language into the emergency rule that would have state-wide impact from the standpoint of spelling out what kind of test requirements there would be for stack emissions and visible emissions.

That linkage was not there previously. We had historically referenced and required people to follow the federal methods under 40CFR60. Now we have stated that that is what we need to do in an emergency filing.

In reconsidering or looking at the emergency changes and going back and looking at this regulation in general for needed changes, there are other

things that we are proposing to change in the regulation as well, not only emergency provisions but other provisions, because the regulation is quite old.

It was a 1968 regulation. There are parts of it that are no longer even applicable. The early registration and phase-in permitting requirements and other language is outdated.

So what we have done is propose to change language as it is highlighted or whatever in our provisions. Principally I am going to let Randy Suter, our Staff Attorney, talk about some of the changes and then some at least primary response to some of the early comments we got in a couple of letters.

I would say the major change we are making to the regulation beyond what was done on the emergency level would be to require -- and this is something for some discussion -- sort of a phase-out of the old registration idea and a phase-in of operating permits. Now we already have operating permits required under this regulation for coal preparation plants.

The impact or at least one of the changes we are proposing here is to expand that to coal handling

operations which would be river terminals and other facilities of that sort as well as just pure preparation plants.

I think there are other changes throughout of more minor consequence. We have added some specific provisions about monitoring of operations that more or less parallel what is in the Resource Performance Standards, Federal Resource Performance Standards.

I think we have received some good comments about -- in some instances I believe it is Consolidation Coal -- in relation to how this phase-in of the operating permits would work.

One thing I will also note -- and I don't think we have made an attempt to deal with that and I would propose that we do add some language that will deal with that -- some of the plants that would be required to get operating permits under this rule now or in the future as we would modify it will be required to have a Title V operating permit under the new rule we have to put in place, the Title V requirements of the Clean Air Act Amendments.

We are going to need to have language

linking these two regulations that says in essence that you have to get a Title V permit or that is the process you go through, not what process is here. This will be a much simpler process, what when we finally put into this Title V. So with those comments --

CHAIRMAN THOMAS: That has got to be added to this language?

MR. FARLEY: Yes. I think what we proposed -- we don't have that spelled out, but maybe Randy Suter can deal a little bit with the comments we have received. Some of the comments from the one party, Consolidation Coal, dealt with the admittedly -- we admit that now -- kind of vague language that we have in here about how we will phase in this operating permit requirement for some of the newer facilities.

In restructuring that -- coming back to you with a restructure of that -- one of the things we will do -- and we will have to figure out how to do that prospectively -- is put something in there or at least tell you that there will be something ultimately in the Title V Rule with a supersession clause or something that tells you how these two programs link to each other so

that one will override the other one or whatever.

CHAIRMAN THOMAS: I understood the Consol comments to be the conflicting language. In one part you cannot operate without a permit and another part that says --

MR. FARLEY: Right. I think that does need some cleanup and maybe Randy might --

CHAIRMAN THOMAS: -- after 120 days or something.

MR. NEELY: It seems to me we talked about this before, didn't we?

CHAIRMAN THOMAS: We may have in an earlier discussion. I don't recall.

All right, sir, you may proceed.

MR. SUTER: I have got all these notes, and Dale has already said almost everything that I wanted to bring up. So that is going to make it a little tougher. Let me just start by going through the regulation and pointing out even the small cleanup things.

As you know, what we are balancing here is the PM₁₀ non-attainment status and a 1968 regulation that -- we are talking, I guess, almost 25 years it hasn't

been changed.

If you would like to go straight through this, the reg -- very little changed under definitions. There is on 2.1, I think, a slightly different method of citing the code. There is a more comprehensive definition of stack under 2.13.

Smoke has been eliminated as a reference point here, and we are, I guess, updating the terminology to particulate matter, and the Ringelmann Smoke Chart is just referred to as Ringelmann in here, again bringing in a definition of opacity which is a little more up-to-date than smoke.

The changes then on Page 3, again to particulate matter, and we have added the 20 percent opacity in 3.1, the 60 percent opacity in 3.2 and 60 percent opacity in 3.3.

I was talking to Mr. Hewett here a couple of moments ago and he had indicated in 3.2 that he may want to speak to that or make some other comment. It is certainly worth considering.

The reference method that we talked about later on is a six-minute reference method, and here we are

talking about five minutes in a sixty-minute period. So we very well may want to update that too. That is still some language that is held over from 1968.

Some of the other changes involve the phase-in language as Mr. Farley indicated and some matters regarding thermal dryers and the incorporation of 45CSR16 standards for thermal dryers.

The bulk of the changes begin on Page 5 and that begins with 6.3 and that is a very specific geographic indication of, for want of a better term, the Follansbee area in PM_{10} in the types of controls that they are going to have to have in place, and the reason for this again is that there is one non-operating coal handling facility in that area that did not desire to enter into a consent agreement which necessitated the change in the regulation.

The monitoring section on Page 7 is new, and you will note that the registration section has been deleted. Construction modification and relocation pretty much on Page 8 would be in accordance with our Code sections and regulations thereunder, again an update reflecting 13.

Operating permits seem to be the wave of the future with Title V as opposed to mere registration. It is nice to have a handle on what the facility is doing.

MS. NEELY: How about this language down here, this 120 days business? Are we going to address that at this time?

CHAIRMAN THOMAS: I understand that is going to be modified.

MS. NEELY: Are we going to talk about that?

MR. FARLEY: Do you want to go ahead and talk while you are on that --

MR. SUTER: Sure.

MR. FARLEY: -- talk about the comments we got and what the primary response was?

MR. SUTER: Why don't I take the --

CHAIRMAN THOMAS: Before you get into that, let me ask you about this Section 6. There is a great deal of detail as to the methodology required. Is there any danger in violating the Code provision that prohibits our stipulating equipment methodology and that sort of thing or has this been pretty well tested legally

as being in keeping with the intent of that prohibition?

MR. SUTER: That is a very good question. I don't know if I have a very good answer for that. The language evidently came as a result of the set provisions, the specifics in the language. I think we are talking about specific -- I think there is a difference when you are talking about specific kinds of controls in place and specific brands of controls in place, if you will.

I think that is one of the distinguishing features. As long as they do these things, we are not endorsing any particular person that they have to go to to purchase these things, but they are going to have to implement the certain controls in whatever fashion is economically feasible, I would think.

CHAIRMAN THOMAS: I just wonder if in cases where there might be a problem area if equivalency could be included. For instance, automatic washing system, that is pretty specific. It has to be automatic. Would it be not appropriate to have "or equivalent system"?

MR. SUTER: I would guess that would depend on what -- there certainly are options. When you

have an equivalent system, then I think you have arguments as to what is or is not equivalent, whether it meets the same stringency as an automatic washing system.

You may get into a big argument over that. It may be very vague, any comment you have got on regulation, although some of them are vague on purpose. Vagueness leaves itself open to argument.

MR. FARLEY: Let me interject here. A lot of this language got put in here really because it was originally intended to be written in even more detail, I guess, and more specific to the one -- we had actually drafted consent orders and were well into discussion of those with the company when the company decided because of its situation it didn't want to do that.

So we tried to make it a little more general and put it in here really knowing we were targeting for that tiny area, one company, and maybe if there were new facilities, this might pertain to them too.

One thing where you are talking about there, where we say -- get pretty specific, I think we have had comments from Mr. Parsons and other attorneys about being overly specific in orders and other things

before too.

I think that maybe where we do start talking about criteria being met and specific counts of control that it is okay in many instances to go ahead and maybe even suggest we put in "or equivalent."

The only thing that that opens up in regard to, let's say submission of these things as part of our SIP is that director's discretion issue that the Commission has heard about so much in relation to the BOC rules. EPA will then come back and question, "Well, what does that mean?"

CHAIRMAN THOMAS: Okay.

MR. FARLEY: But we will give consideration to that since the issue has been raised that as to whether that language be --

CHAIRMAN THOMAS: I raised that for the purpose of testing it legally and if you are comfortable with that, Counselor --

MR. KOPELMAN: Mr. Chairman, I agree with your comment, and just on Dale's comments, I do believe that in the regulations we should put "or equivalent" when we start getting very specific because I think that there

is a specific prohibition against exactly specifying the method of operation or the type of equipment. So I agree with that completely.

Along the line of -- I think Dale mentioned that Mr. Parsons has raised in the past some objection when we start getting specific in consent orders or in permits. I have no problem there because it is not a regulation in that it's a consent order. It is a consent order and they agreed to it; it is negotiated. To get specific there, I have no problem.

In permits, when the Director goes back and in a situation says to the permit applicant, "Well, we can approve -- we know we can approve an A unit and a B unit and a C unit and if you give us one of those, we know that that is approvable," I think that doesn't violate anything.

Then Randy is right, if somebody comes back and says "Well, we want to put in a D unit," then it is either negotiated, the Director is convinced that it will work, and it can be brought to this Commission as a determination.

Here I agree with your comment that it

should say "or equivalent."

MR. SCHOCK: I would just echo that comment maybe on a little bit more fundamental level. I really think that our concern ought to be that the underbodies of coal trucks are cleaned but prior to exiting on the streets. If we make a mistake as a body, then we start specifying the technologies to achieve the objective.

Our role really ought to be to set the objective and then leave it up to folks to figure out how to get that.

MR. KOPELMAN: Right, that is the intent of the Code.

MR. SCHOCK: And then where it says that the systems are to be maintained properly, they will say "Well, we have got the equipment that you told us to have," and so we ought to focus on objectives, not on technology.

I think we focus on technology; we cannot predict it, as well as tend to add costs and restrict innovations and do other things that are not constructive, at least in regard to the economy and the environment.

CHAIRMAN THOMAS: Okay, I apologize for the interruption. Do you want to speak to the letters that were received?

MR. SUTER: We received two comments, one from a Mr. Kerch of Consolidation Coal Company. He basically had four comments, the first one being he was wondering why we put the specific provision regarding the Follansbee non-attainment area in this particular regulation.

He thought that perhaps a specific regulation involving all of the various companies that would be putting out PM_{10} in that area would be more effective, and in essence, I would agree with him except for the fact his assumption was that we would have to go in and change a lot of different regulations.

This was the only one that needed to be changed because of the consent orders that were entered into with all the other companies that were putting out PM_{10} . So but for the fact that we are only talking about one non-operating facility in one area here, I would agree with him, but this appears to be more the effective way.

MS. NEELY: I have a question about that.

What if some other company started up something and applied for a permit, is this going to cover them or would you cover it all in the permit? How would you handle it?

MR. FARLEY: The attainment would meet this requirement.

MR. SUTER: In that particular geographic area.

MR. FARLEY: Right, in that small area.

MS. NEELY: Yes. I am talking about that area. We just had somebody just bring up that.

MR. SUTER: Right. It would apply across the board to all coal handling facilities.

The second question was in regard to one that a lot of people have brought up at this point in time, the wording of 9.1. I would agree with him that that is not very good language. There are some alternatives that could be used there; for example, breaking this up into a few different sections.

We could revise those into -- for example, 9.1 could be reworded to say, "Effective 120 days after the effective date of this legislative rule no person shall operate any coal preparation plant or

handling operation without an operating permit."

"Any person issued an operating permit for a coal preparation plant or handling facility shall operate such facility in accordance with all terms and conditions of the permit."

9.2 then would be not changed due to the change from what is currently there. "A complete application for an operating permit shall be submitted upon such forms and shall contain such information as the Director may specify. The complete application shall be submitted to the Director not later than 120 days from the effective date of this legislative rule."

9.3, "If a complete application for an operating permit is received by the Director prior to the expiration of the 120-day period, this contained in Subsection 9.2, then the source will not be deemed in violation of Subsection 9.1 during the pending of the application."

MS. NEELY: Read that one again.

MR. SUTER: It didn't flow too well, did it? During the pendency of the application they would not be in violation of not having an operating permit.

MS. NEELY: That is the 120 days or the 120 days plus the --

MR. SUTER: 120 days plus the --

MS. NEELY: Plus whatever it took?

MR. SUTER: If I came in on the 119th day and turned my application in acting correctly under the law and it took the Commission or the Director a few months to get that out, then there would be basically in effect an application shield, that as long as I was operating under the rules and regulations of the Commission I would not be in violation of not having an operating permit.

MS. NEELY: Do we have any kind of handle on this?

MR. SCHOCK: The 120 days bothers me a little bit because you are giving carte blanche to every operation. For example, like I could see where you might have a shorter time fuse on this than having to get a permit, let's say in 45 days, but having some waiver provision, that the Director can issue a waiver up to a certain amount of time to let them get their permit application or whatever they needed to do into your hands,

but 120 days for a small operation versus a big operation, I don't know whether everybody needs the 120 days.

MR. FARLEY: To be perfectly honest, the reason this wording was like it is, it is being criticized -- we are criticizing our own wording as we wanted this to be somewhat under our control. By that I mean a little more passive given, then we might suddenly find that we have got to permit a thousand facilities at the same time we are working on three to four hundred Title V permits. This we would have a lot less -- this would be given less priority.

By that I mean what we would like to be able to do is control the pace in which we issue those so to have the ability in the reg as we constructed it to control the pace from which we issue these permits.

MS. NEELY: But that is not controlling your pace. That is only controlling their pace.

MR. FARLEY: Right. Now as far as the 120 days, that could be shortened. We have typically given people, I think, anywhere from 30 to 120 maybe in various regs or requirements of the Board to get information to us, applications or registrations or

whatever under our reg. So that is a matter of choice. If we think it would be good to shorten that, that is fine.

MR. SCHOCK: The way it is written now you could conceivably have 50 applications come in in the 120 days and also you have an onslaught of administrative --

MS. NEELY: That is right.

MR. SCHOCK: And you could pace that if you would have some kind of a provision whereby you could establish a dimension in time between how long extra over this initial 30 or 45 days you are going to give them to complete their application.

MR. FARLEY: Yes. I think that is really a matter of what we think is right as far as what we get the companies to submit once we are ready to go. We just don't want to mandate that, for example, we have to get everything out to them in 120 days.

MR. SCHOCK: See, we just did this in another rule. I mean, they have 45 days to submit an application for a permit. Now that permit requires a management plan. Those plans can be very comprehensive

and sophisticated. So we can allow them up to 120 days to complete that plan.

MR. NEELY: But on an individual basis.

MR. SCHOCK: On an individual basis based on the complexity and the sophistication of the individual operation. So I think we can set our own pace.

MS. NEELY: Are these operating permits going to be more or less all the same? I mean, are you going to crank them out like cookie cutters with a cookie cutter, or are they going to be different and tailored?

MR. FARLEY: Right now there are already operating permits on what, several -- a couple hundred, three hundred, I don't know how many we have right now in the system -- several hundred of these facilities under Reg 5 now, and those things right now are nothing more than certificates, to be honest.

What they are is something that reflects that we have issued a certificate saying you are authorized to operate based on our last inspections of the facility.

What we probably have in mind here is to set conditions on it, spell out what is in the regs,

something -- even if it is a general permit -- a bit more than what we are doing now. For those larger facilities that default or go for Title V, those may be very detailed permits, very source specific.

I would say that as we sit down and find out what we have to do with this, whether those conditions will be -- to the extent possible those conditions will be general. If we have to put specific conditions in given a certain facility's specific character or location or whatever, then those would be added to the permit, but it would be more than the current certificate.

MS. NEELY: I think 120 days is too much.

CHAIRMAN THOMAS: What is that?

MS. NEELY: I just think that is too much time, and it is not really pacing it like Joe says.

MR. SCHOCK: Well, and if they are smart, they are probably working on something like that. I mean, you know, these are available to companies.

CHAIRMAN THOMAS: Your point was you might get a batch of them on the eleventh hour of the 120th --

MR. SCHOCK: Yes.

CHAIRMAN THOMAS: Wouldn't that be true whether you set 90 days or 120 days, you would still have the same influx of things just before the deadline?

MR. SCHOCK: Yes, but see, my suggestion was that the Director then could issue a waiver or an extension of time based on individual circumstances that could vary up to a given period of time.

CHAIRMAN THOMAS: Administratively that is a horrendous task. How are you going to determine -- how many of these do you expect to be permitted?

MR. FARLEY: We don't have a good count right now. We probably have a pretty good count, although I don't have it on hand here on what we already have in the current system, but when you start talking about all the coal handling operations, I don't think we even have a good list yet. We have a large list of things that are already under construction permits or whatever.

CHAIRMAN THOMAS: It would be several hundred anyway.

MR. FARLEY: It is going to be in the hundreds, yes.

CHAIRMAN THOMAS: So administratively how

are you going to determine who is going to be given a time extension? I think you have to have one single target date. Whether 120 is too long may be a point of consideration.

MR. FARLEY: I think the whole idea here was to not -- for whatever we give the companies -- in other words, we need to be ready to perform and all the instructions be -- whatever we give the companies to fill out we could probably parallel some hybrid between our permit application forms and our registration forms now.

If 60 days is believed to be adequate for them -- it doesn't bother me that 800 companies file all of these at one time. What I don't want to do is paint ourselves into a corner where we say we only have 120 days to turn around your permits. If we want to give ourselves a time limit, it will have to be a lot longer.

MS. NEELY: But you don't give yourself a time limit here.

MR. FARLEY: Right. That is the only issue I have with it. I think in terms of giving them 60 days --

MR. SCHOCK: Or an interim permit.

MR. FARLEY: -- and then allowing them more time, that is fine.

MR. SCHOCK: The other thing is this could indicate 6.5 man years --

MR. FARLEY: We will need to get all that out.

MR. SCHOCK: -- and that funding support is going to come from the permit fee. So the quicker you can get the permit in here with the fee to hire the staff -- because you are not getting state money to support --

MR. FARLEY: I don't expect that fees will cover that entirely. It will cover some of it, but I imagine for the term we are talking about here that will be something that will fall out between general --

MR. SCHOCK: I am suggesting if you use 120 days it is going to take you four months to get any money to begin to do the work load.

MR. FARLEY: Right.

MR. SCHOCK: -- and I think you need a shorter fuse on that.

MR. FARLEY: Right. We would get a

relatively small component of our total fees right now probably from this set of sources.

MS. NEELY: If it is not a complicated arrangement -- that is all I am trying to find out. If this is a complicated permit process, then I think maybe 60 days, but if it is not, why not just 30 days if it is just a matter of filling out a form?

MR. FARLEY: I think 60 is reasonable. Most people can turn things around in 60 days; 120 we will be pretty liberal. So if 60 is felt to be a better term, that is a change that we would be inclined to make.

CHAIRMAN THOMAS: Then you want a longer period to react to that, to turn these around?

MR. FARLEY: Right.

CHAIRMAN THOMAS: What happens to the applicant during that time?

MR. FARLEY: During that time they would be shielded. I mean, that was the concept here, as long as they are complying with the rule. Otherwise there may be no violation until we act and they had a permit.

MS. NEELY: So we are not going to use that language "not later than 120 days following the

receipt of the Director's written recommendation"? We are going to --

MR. FARLEY: We will just say within 60 days effective this as a rule you shall submit --

CHAIRMAN THOMAS: Yes.

MS. NEELY: Yes. How about this agency? Is there going to be any time limit on this agency?

CHAIRMAN THOMAS: I don't know that there are going to --

MR. SCHOCK: I don't think you ought to lock yourself into something.

CHAIRMAN THOMAS: -- at this point determine that is a reasonable time allowance to put.

MR. FARLEY: Considering our history and the fact that some of these are going to be automatically be put on a time line if they fall under Title V, that would be the NSPS type of plans.

I would like unless someone objects to that or has no problem with that just to leave it as is.

MR. SCHOCK: Agreed.

CHAIRMAN THOMAS: Leave it what?

MR. FARLEY: Just as it is and then we

will phase out all this mess and get them out to people. If we can do it in three months, fine. If it takes a year, fine, because once we issue that permit it will probably be unlike what we have done in the past for a relatively long term.

That is another issue, I guess, that could be brought up here, that we need to spell out the terms of the permit, that we issue them yearly.

MS. NEELY: Yes, I was going to say -- annually?

MR. FARLEY: Just an annual thing. We wouldn't want to do that under a more --

MR. SCHOCK: Do you have a requirement that requires them to renew it with them like 45 days from the expiration date of the permit?

MR. FARLEY: As I say, right now, there is no --

MS. NEELY: There isn't any expiration date.

MR. FARLEY: That is not spelled out as an annual permit.

CHAIRMAN THOMAS: Is there any purpose in

having it removed? Why not -- as long as conditions don't change and I mean, as long as they submit their fee annually, continue the operating permit? Why do you need --

MR. FARLEY: I would imagine we would do sort of what we do today. Say we spelled out a five-year term and we came to the end of the five years and we said, "Well, we haven't changed our rules; EPA has not done anything new; nothing has happened; we would just re-issue -- particularly if they are general permits -- just re-issue the same permit again.

But we would leave that -- a term in there just so it forces us to go back and review whether anything has changed that should be incorporated into those general permits.

CHAIRMAN THOMAS: We would be forced to do that if EPA requires it of us in any instance.

MR. FARLEY: Right.

MR. SUTER: Again, the larger facilities will probably fall under Title V regulations.

CHAIRMAN THOMAS: But that is a whole other issue. I guess if there --

MR. SUTER: That will probably be exempted out of this.

CHAIRMAN THOMAS: That is right, exempted out of this. So that is not at issue here. The question is why set target dates that people can miss and then be subject to a violation when there is no particular need to change things?

MS. NEELY: Well, we don't know unless it is reviewed. If you come in it with a five-year review type of thing and they say, "Yes, you are still doing the same thing and we are still -- our regs are still the same and everything is okay" and then they just, like you said, just --

CHAIRMAN THOMAS: Well, we can make it subject to action of the Commission they will have to resubmit, but why cause a re-submittal?

MR. SCHOCK: Well, you could also require that any major change in their plan or their operations have to be -- they have to submit that for approval.

CHAIRMAN THOMAS: They have to do that anyway.

MS. NEELY: They have to do that.

CHAIRMAN THOMAS: You have got Reg 13 and you have got all kinds of --

MR. FARLEY: There would be any --

MS. NEELY: Any kind of change --

MR. FARLEY: -- describe any construction or modification in the terms.

MR. SCHOCK: And basically you know what the operation is.

MR. FARLEY: Yes. Now one thing I might add, though, to that -- and that is an issue we need to talk to the manufacturers and others about -- there has been a request in here since probably 1986 if not before and it really needs to be looked at now.

I think we told the manufacturers we were going to do that and some of them are concerned about Reg 13 in general, which is our catch all resource review reg, as to whether that reg should be repealed in its entirety or changed to conform to some of the desires of the regulating community in essence.

I think one of the things we are going to have to figure out now in relation to writing a Title V rule and looking at our other new source review rules is

how we are going to change if we change Reg 13 because Title V for at least the major facilities will probably have a whole process in itself as to how you have to handle modifications.

Somehow we have to square those regulations. So we don't know exactly what Reg 13 might look like when we come back at some point with a proposal to you how to fit all those together.

So in relation to the comment, is that already taken care of, today I think that the general Reg 13 takes care of that. If we change the reg then we are going to have to deal with it as far as how and why you--

CHAIRMAN THOMAS: Well, but whatever you do to change Reg 13 would encompass those preventions in something else.

MR. FARLEY: Yes. You just have to look at what you are doing to this reg in question.

CHAIRMAN THOMAS: My point is unless we as a Commission act to ask or request or require a permittee to submit their renewal, why should they be required to do that at any particular time if conditions don't change?

We set up these target dates five years out. Somebody puts that in the file and forgets it and then all of a sudden five and a half years out they find they are in violation. Nothing has changed. We go through agony of how to deal with that, penalize them because they have missed the target date.

Why set that sort of a situation up? If we need to change it, require modification for a renewal, why don't we set it up so that we can figure that, but unless we do, that permit stays in effect?

MR. SCHOCK: Okay, but then is there going to be an annual fee?

CHAIRMAN THOMAS: Yes, yes.

MS. NEELY: But if you have an annual fee, don't you have some kind of a review at that time or are they just sending a check?

CHAIRMAN THOMAS: We don't need to. We don't need to. There are all sorts of permits like that, a mining permit where you have to go through once a year with your mining permit as long as nothing changes.

MR. FARLEY: Maybe what we need to do then is let the permits have an indefinite term and have a

reopening clause --

CHAIRMAN THOMAS: We can reopen it
anytime after five years or --

MR. FARLEY: -- that says for whatever
cause --

CHAIRMAN THOMAS: Sure.

MR. FARLEY: That is fine.

MR. SCHOCK: Are you going to send them a
little sticker like your license plate?

CHAIRMAN THOMAS: It is just a requirement
like operators --

MR. FARLEY: We have left that open here
now, so whatever way we want to deal with it. It is
either spell it out very clearly or just leave it open.
It is very open today. I mean, it is an annually
renewable thing.

MS. NEELY: Well, where does it say that?

MR. FARLEY: What?

MS. NEELY: Annually renewable.

MR. FARLEY: It doesn't.

CHAIRMAN THOMAS: It doesn't. We have
got to put that in.

MR. FARLEY: We have done that. That is just the way we have handled the program.

MS. NEELY: Well, let's put it in there.

MR. FARLEY: If you want to spell out and say we will have an indefinite term until reopening by the Director or the Commission for cause or a change of rules or whatever, we can do that.

CHAIRMAN THOMAS: Okay.

MR. SCHOCK: Where are the fees in the rule?

MR. FARLEY: The fees aren't here. Right now most of these facilities would pay a fee of probably anywhere from 200, I believe, in the upper thousand dollars, in another reg.

MR. SCHOCK: It is not going to be a part of that?

MR. FARLEY: Right, it is not attached to this regulation. It is spelled out in a separate regulation.

MS. NEELY: I think it would be clearer if you had a reference to that or something maybe.

MR. SCHOCK: Oh, yes.

MR. FARLEY: Just a clause in there that says you shall pay all fees due under --

MS. NEELY: You really have to have something that says annual fees will be paid in accordance with -- whatever the citation is.

MR. FARLEY: That is fine.

MR. NEELY: Let's knit this stuff together so it is not all over.

MR. FARLEY: Right, okay.

CHAIRMAN THOMAS: Okay. Do you want to proceed or have you lost your place?

MR. SUTER: After that particular section the gentleman from Consol indicated he was not particularly happy with subsection 9.2 and suggested some other wording. In looking at both this particular language and his language, it would seem more reasonable to indicate language that would be enforceable as a result of the provisions of the recently updated code provisions.

That sort of covers a whole lot of grounds, a whole lot of different methods, and I had indicated, for example, adding a section indicating the provisions of this legislative may be enforced by all the

applicable provisions of Article 20, Chapter 16 of the West Virginia Code as amended.

That would, I think, take care of his objections as well as bring -- this language here was drafted prior to the time the Code was updated. It has been around for quite a number of months.

CHAIRMAN THOMAS: Does that require notification?

MR. SUTER: Like the existing assist process, for example.

MR. FARLEY: For a permit requirements there is a whole provision in there about that that can be used.

MS. NEELY: His complaint is it that it does not provide for notice of suspension or revocation. Does the law require notice?

MR. FARLEY: If there is a violation we require -- we have to show notice of a violation and revocation. Before you revoke someone's operating permits, you would probably have to have a history for a violation. You would have to have a pattern. I don't think you would just issue an order to revoke a permit

unless there was a pattern.

MR. SUTER: Under the provisions -- the new code provisions, which is 16-20-6, it talks about permit suspension, modification, and revocation. If after investigation -- I will paraphrase this -- the Director is of the opinion that the permit holder is violating the rules and regulations, the Director may issue a notice of intent to suspend, modify, or revoke and re-issue such a permit.

Upon their notice, the permittee may request a conference and let the Director show cause why the permit should not be suspended, modified, or revoked.

So I think that takes care of the gentleman from Consol's question in that regard.

MR. SCHOCK: I would like to ask Counselor a question. Is willfully violating clear? I mean, what defines willfully?

MR. KOPELMAN: It is sort of like beauty. It doesn't have -- there a number of cases both state and federal all over the board that assist someone in trying to pin down what a willful violation is. So generally put, it is intentional. Sometimes it requires malice,

sometimes not, depending upon the circumstances.

MR. SCHOCK: What happens if you eliminate that word and just said violated? I am bothered about Dale's --

MR. KOPELMAN: A willful violation is one that would be more severe, more intentional.

MR. SCHOCK: Distinguished from inadvertent?

MR. KOPELMAN: It is like in civil law there is a distinction between negligence and gross negligence and an intentional tort, which is the third step after -- second step after gross negligence.

Like if you did something -- you were driving down the road and there is a pothole and you go to miss it and you hit -- you go across the center line, that is sort of negligence. If you are drunk and you go across the center line, that is gross negligence.

MS. NEELY: And if you aim your car at the guy across the center line that is --

MR. KOPELMAN: Yes.

MR. SCHOCK: I understand.

MR. KOPELMAN: You say "there is that son

of a gun that killed my dog. I am going to run into him." Okay, that is an intentional tort or beyond gross negligence, which is generally criminal.

The willful takes you into the generally criminal area versus --

MR. SCHOCK: If you are satisfied, I am satisfied.

MR. KOPELMAN: Versus grossly.

MR. SCHOCK: I was a little bit bothered by Dale just talking about you have to have a series --

MR. FARLEY: No, what I was getting at --

MR. KOPELMAN: Series could mean a pattern to show that it is willful.

MR. SCHOCK: What is that two? How about one?

MR. KOPELMAN: It could be. You could have a willful violation the first time.

MR. SCHOCK: Okay.

MR. SUTER: I think the proposed language incorporating the West Virginia Code provisions would also incorporate the penalty section, which does not include the term "willful," but it does include the term

"knowing."

MR. SCHOCK: Well, that is another question. I see nothing about fines in here. Where are the fines listed?

MR. SUTER: Again, with enforcement, just in essence adopting the provisions of the State Code, the recently enacted ones, not only would include the permit modification, suspension, revocation, but also other violations for enforcement purposes.

MR. SHOCK: So the fines are going to be in a different code?

MR. SUTER: They are in the operating provisions of Chapter 16.

MR. BENEDICT: They probably are calling them civil penalties, right, so they are negotiable rather than --

MR. SUTER: There are both.

CHAIRMAN THOMAS: I sense that the purpose for the willful language in this instance is the severe penalty revocation of a permit, which is the denial of the right to do business?

MR. KOPELMAN: Exactly. That is a

shutdown. We have never revoked a permit to my knowledge. If we do, we expect that to be a shutdown, and that is pretty serious.

CHAIRMAN THOMAS: And that is the purpose, I think, for the word --

MR. KOPELMAN: And then if someone continues to operate once there has been a determination of a willful violation of a revocation permit, then I will recommend immediately criminal prosecution. So we are starting to get very serious.

CHAIRMAN THOMAS: Okay.

MR. SUTER: Would you like to include -- I guess I am a little unclear here as to whether or not you would like to include the term willful or just incorporate the Code provisions that indicate knowing.

CHAIRMAN THOMAS: I think in this instance that the willful needs to be a part of it since it is a more severe penalty than anything envisioned in the Code.

MR. KOPELMAN: This is somewhat uncharted territory. We have just gotten criminal penalties into our Code not long ago, a couple of a years

now, but we have never really tried to define or ever used them.

CHAIRMAN THOMAS: Okay.

MR. SUTER: The last objection from the gentleman from Consol indicated he had a problem with 10.5 in regard to the averaging or lack thereof of emission readings.

MR. FARLEY: That is 10.4?

MR. SUTER: Yes. I am sorry, it was misprinted here. It indicates "tests to determine compliance with visible emission limitations of Sections 3 and 6 shall be conducted by certified visible emission observers in accordance with Method 9 of 40CFR60, Appendix A as promulgated by USEPA on July 1, 1991, except that visible emissions measurements shall not be averaged."

It is my understanding that that particular test methodology requires taking 24 readings over a 6 minute period and then taking the average of that. In my discussions with the Director he had indicated that he was not particularly interested in the averaging mechanism.

I would assume that is a result of that

because there are some discounts early on in Section 3 that talks about a certain number of readings being discounted, and number two, once you take that discounting into effect any emissions violating the opacity standards are still violations of Air Pollution Law.

MR. FARLEY: Since this is a comment, let me jump here in a minute. The Commission may remember this because some of the people here have been on the Commission a long time and they may have a better insight of this; Bob Weser will.

The reason that was put in there that way saying non-averaging -- and I assume Bob will confirm this -- is that the prior Director, Mr. Beard, I think informed us that all of our particular regulations that date back particularly to the late sixties and early seventies, that there was never any intent to average them. We don't have a reference method spelled out for most of our regulations.

We do for Reg 7, for example, where you say non-averaging based on what he has stated to us to be the intent and presumably the record of the hearings and all that sort of thing.

This is something of an open matter because we don't have a written rule that spells out and that is what we are attempting to do here. It spells out how you will enforce the visible emission standards in Reg 5, et cetera, or Reg 5 and a couple of our other regulations.

So that is the reason it is there. We are saying that you shall use the methodology, and what that means is your observers have to be certified in accordance with Method 9, and you generally have to follow the provisions about where the sun is and where you stand in taking visible emission readings, but we do not rely on a set of 24 readings averaged to determine whether you are in compliance with the 20 percent opacity standards on this rule.

I think that is sort of an important issue to know because there is technical arguments about that as to how you would enforce a non-averaged standard.

CHAIRMAN THOMAS: Is it a customary practice in using the Ringelmann that this 24 reading is--

MR. FARLEY: That is the way the EPA lays it out in the entirety of Method 9, that you will take a

minimum -- I think you can probably take more than that. They spell out you take 24 readings 15 seconds apart and you average that and that is generally a test.

CHAIRMAN THOMAS: That is the published EPA methodology?

MR. FARLEY: That is the published EPA method as referenced to their promulgated Resource Performance Test. We tend to default to those standards where we have those specified statements.

CHAIRMAN THOMAS: Can we not adopt that procedure?

MR. FARLEY: We could adopt that, and I would assume we could do that if the Commission elects to do that. The only thing that I would assume to be at issue there is that we would presumably be relaxing what was at least stated intent and practice for 20 years.

Now I had asked Bob is that the way that the rule has historically been enforced with non-averaged readings?

MR. WESER: Yes.

MR. BENEDICT: But absent an average what does one do, take the worst reading, the best reading,

throw out the top two? How does one arrive at a value?
Just one reading and then --

MR. FARLEY: Literally if you wanted to say I am taking readings here and I have got a 20 percent of standard and I have read a 25 percent, you could literally say the guy is in violation.

MR. BENEDICT: I am a great respecter of tradition. Twenty years is a long time, but gee whiz --

MR. WESER: We don't write violations on one reading. As a practical matter --

MR. BENEDICT: So in our practice we are not even doing what we have been saying?

MR. WESER: All I am saying is you could.

MR. BENEDICT: But it doesn't make sense to do so, does it?

MR. WESER: I am saying that as a practical matter we wouldn't want to come in before you and say we spotted some guy at 80 percent one time. Normally when we come before you and the Commission, if you went back to the record you would find that they had not been 80 percent but that there has been a significant number of readings way beyond what compliance is.

CHAIRMAN THOMAS: It is sort of an averaging over a 24-hour period or a so many day period. So why should this be any different?

MS. NEELY: How long a time is involved in this averaging?

CHAIRMAN THOMAS: Fifteen seconds.

MR. WESER: Under Method 9 it says before you can have an official opacity reading -- in other words that you could use to say somebody is in violation and Method 9 is in your appendix to NSPS standards -- you have to take 24 consecutive readings and each reading represents a 15-second period.

They have to be consecutive and you have to have 24 which is in 6 minutes. So in other words, you could go out and read 6 minutes in a row. That would make your opacity reading official.

Now under ours it says in example -- in some of our regs it says that you can't see 20 percent opacity except for 5 minutes out of any hour. So what we do is we would read until -- and it said for 5 minutes you would be allowed say more than 20 but not more than 40.

So what we would do is we would sit down

and we would read the stack long enough until we found that we had more than 5 minutes that was above 20 or if we went out there and some person was reading -- say the opacity was 80 percent. We may sit there and take 4 or 5 and if it stays that way, we could write a violation just because he is exceeding 40 percent, but we normally would take some time.

So the difference is that we actually kind of pick out all the -- if we read for an hour, we would go through those readings and then pick out every one above 20 percent and kind of put them in a block and then we would total up, and if they say, were above 20 percent for 30 minutes, they are only allowed 5 under the reg and we would cite them in violation.

So we actually pick out and then sum those individual readings to see what percentage of the time out of an hour they were exceeding.

MS. NEELY: Well, it doesn't spell that out in here obviously.

MR. FARLEY: It is something where you are kind of informed what EPA has done and established with some statistical analysis and what we had stated, I

believe, to be the original intent.

MR. BENEDICT: This sort of thing can lead to great disparity between individual inspectors in their approach to an issue, and I think that is very dangerous for a regulatory agency to have that kind of free open-ended sort of procedure.

MR. WESER: There really is no personal judgment.

MR. BENEDICT: Then if you write that down--

MR. WESER: You end up just taking the reading and then you sit and make blocks of more than 20, between 20 and 40 and then more than 40.

CHAIRMAN THOMAS: They have to be consecutive blocks, consecutive readings.

MR. BENEDICT: No, that is what he is doing.

MR. WESER: No. What I am saying is each reading you take represents 15 seconds. So if you read for a whole hour, you would have 4 times 60; you would have 240 readings, and then you sit down and we block out individual 15-second periods and you sum total them into

minutes.

MR. FARLEY: The bottom line is you have to use some judgment in there or you could sit there and have the guy read 10 -- they could take 10 6-minute tests and the guy could pass 9 of them and flunk 1. Do you immediately issue them an ^{NOV}NMB? Maybe not. Maybe you can tell him he needs to do a stack test to figure why he has got that irregular kind of emission.

MR. SCHOCK: Is there a written protocol? Do you-all have written protocol?

MR. BENEDICT: Yes. The EPA has a written protocol of which we deliberately exclude ourselves from.

MS. NEELY: Yes, and it is still only six minutes.

CHAIRMAN THOMAS: Why don't we adopt that and get on with this.

MS. NEELY: It is only six minutes.

MR. BENEDICT: Per test.

MS. NEELY: No, 15 seconds, 15-second readings.

MR. BENEDICT: Well, that is an increment

of the test, but you don't have the test until you have done the specified number of them.

MS. NEELY: That is 24.

MR. BENEDICT: Yes, and then you can do it again, another test.

CHAIRMAN THOMAS: Is there any problem to adopting the EPA procedure?

MR. FARLEY: I don't have a problem. Personally I don't have a problem with that. The only reason it is written the way it is is because of history, and I think one could argue that that is a relaxation.

CHAIRMAN THOMAS: History and practice has been different.

MS. NEELY: Do you have a problem with that?

MR. WESER: No. I don't have a problem. I am just saying that when I came here -- the previous Director was the one which wrote Reg 7 and he told us that the way that -- I am going on what I was told about the reading, and that is the way it was done because he said that is the way the regulation was written.

MR. BENEDICT: Those were simpler days,

my friend.

MR. WESER: I mean, seven is already there; it averages seven.

CHAIRMAN THOMAS: Ringelmann is in my judgment as much a science as anything.

MS. NEELY: Murky.

CHAIRMAN THOMAS: I think we need to have some sort of an averaging out to make it meaningful.

MR. SUTER: I did have one more comment from the gentleman from Pocahontas Coal. I suppose he questions the need for regulations in general, and as a generic answer to that obviously his specific facility may not be in violation of anything, and if we took it down to the nth degree his environmental impact would not be that great, but once you add a zillion of these plants together then you have to have something that goes across the board and I don't want to shove these comments aside. They do appear to need somewhat addressed.

MS. NEELY: His last paragraph is absolutely correct. I mean, we don't have any kind of jurisdiction over that.

CHAIRMAN THOMAS: He is concerned about

the paperwork. That is an unfortunate consequence of the regulation. I do think in fulfilling our Commission objectives that we ought to bear that in mind and to the extent possible minimize any unnecessary paperwork.

Does that conclude it?

MR. SUTER: That pretty well concludes it.

CHAIRMAN THOMAS: Do you have any more comments on this, Dale?

MR. FARLEY: I have no other comments.

CHAIRMAN THOMAS: Is there anyone from the audience who would like to speak?

Yes, sir. Would you come forward and swear in?

MR. HEWETT: I am Chuck Hewett with Ohio Power Company.

CHAIRMAN THOMAS: Would you swear in, please?

MR. KOPELMAN: We take sworn testimony.

(Witness sworn.)

THEREUPON,

C H U C K H E W E T T

being first duly sworn to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION

MR. HEWETT: I am Chuck Hewett with Ohio Power Company. I just wanted to expand upon some of your comments about the Method 9.

You do have to take the 24 readings over a six-minute period, and I would like to encourage you to go in that direction of having that as the standard to be used for viewing visible emissions. So I guess on 10.4, which is on Page 9 there, I would encourage you to delete the phrase about, "except that visible emissions measurements shall not be averaged."

Indeed I don't like the idea of having the authority in the regulations where someone could in theory go and read the stack instantaneously and declare that essentially in violation.

There is on Page 3 then references to some averaging time periods, and it is an interesting idea the way it was presented by Bob Weser in taking like an hour or -- I am not sure what aggregate time period here -- I guess a 60-minute time period and pulling out

each instantaneous reading and making up 5 minutes.

I am not sure whether that is better than taking a six-minute time period that has been averaged. I suspect that it is maybe a little worse, and I would rather see the six -- rather than five minutes, a six-minute time period in which you do take your twenty-four readings, average them out and that is your block of time that you are not allowed to exceed more than six minutes.

Then I would carry that down to 3.3 where it refers to eight minutes, and it could either then be six minutes or twelve minutes and preferably I would say twelve minutes in that case.

I think that those minor changes are simply housekeeping in keeping up with the way the USEPA is intending their Method 9 to be used. That is all the comments I have.

CHAIRMAN THOMAS: "Any questions?"

MS. NEELY: Why 12 minutes? What is magic about 12 minutes of the thermal dryer? They are talking about fuel burning equipment on a thermal dryer at 3.3.

MR. HEWETT: Right. It is only that if they are going to do a visible emission reading, you are going to be doing it in six-minute blocks, and so the smallest increment you can have is six minutes.

In the 3.2 where you have five minutes, if you look at it in six-minute blocks, you have essentially made five minutes zero because you cannot have five minutes.

You are looking at twenty-four readings. You are going to average those into one number and you are either over or under. So if that particular reading for six minutes is over, then you have exceeded it because you have only given yourself a five-minute exemption.

MS. NEELY: That is 3.2 where you are talking about five, and you want to change that to six to go into the --

MR. HEWETT: Right. Now you go to 3.3 and you have either gone six minutes or if you want it to be twelve minutes --

MS. NEELY: But that is in any operating day. We are talking about two different -- are you talking about time periods as well as the extension of it?

In other words, one is an operating day and one is any 60-minute period.

MR. HEWETT: Right, but still when you are taking a visual reading if you go and read it for a six-minute time period, you can have six minutes that are out of compliance. Then later on in the day if you are reading it and you get another six-minute reading and it is out of compliance, you now have twelve minutes. There is no way to get an eight-minute time period with a visible reading, is all I am saying.

MS. NEELY: How would you like to have two six-minute readings separated; in other words, some other time during the day, or do you want twelve minutes all at once?

MR. HEWETT: To give it a twelve-minute time block would obviously be an advantage, and you are going to take two six-minute readings, put them together and average them and that would help out, or you could look at it that you have had six minutes here and later on you get another six minutes and your total is twelve. You know, are you allowed to have that or not?

Again, it is getting into an area that I

haven't had a chance to really talk to any people --the personnel of this office as to how they are going to enforce it, and that is what is perhaps a little vague about the way it is even currently done versus the way we try and apply a Method 9 in enforcement.

All I am saying is that these type of things I think need to be addressed again so that it can be, I think, brought up to essentially 1992 here in the way that a lot of the enforcement is done with the visible emissions readings.

Since I don't really deal with this type of operation, I am not going to recommend that that industry set it at six or twelve. I would rather just say that I would like them to consider six and twelve minutes as a matter of practice in applying Method 9, and I would defer to Bob Weser or Dale Farley as to in applying Method 9 how to set their standard, whether it should be six, twelve or an hour because we are asking for a different way to apply Method 9, and I am not sure how to fairly apply it to this type of activity, is all I am saying.

MR. WESER: One thing I might add here,

just because I said to have an official reading takes 24 consecutive, it just takes a minimum of that to make it official. I mean, you can read 10 minutes or you can read 15 or 20. To be official you have to read a minimum of 24 consecutive readings. So once you pass the 6 minute you really -- it is not magical that you do it in 6-minute increments.

CHAIRMAN THOMAS: No, but I think his point is that that is the official designation --

MR. WESER: Right.

CHAIRMAN THOMAS: -- of what the opacity is in a six-minute block. That is the official, and if we are going by Method 9 and Method 9 will be tied into these other provisions here, we ought to use that six-minute interval in some combination of two or one, and that official opacity reading which is a six-minute block should tie into these two provisions here at start up, the fuel adjustment and whatever else.

I think that is your point, is it not?

MR. HEWETT: Yes.

CHAIRMAN THOMAS: Any other comments?

(Witness stands aside.)

MS. NEELY: There is a man out here.

MR. RANEY: Mr. Chairman, are you going to swear me in?

CHAIRMAN THOMAS: Yes.

(Witness sworn.)

THEREUPON,

B I L L R A N E Y

being first sworn to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION

MR. RANEY: Mr. Chairman and Members of the Commission, I am Bill Raney representing West Virginia Coal Association. I have got some questions. I am not a student -- well, I guess I am a student. The Director will tell you I have not graduated from this Air Pollution School yet.

The questions relate to some general kinds of things and perhaps can be answered today in the context of these regulations.

B.1 is the first, regarding the permits or the requirement for permitting of modifications in construction, and that is a definition or a clarification

of modify and that is in many of these coal loading facilities would the changing out of a belt or certain mechanisms within the internal structure of the buildings or the facilities by which we are transporting coal to the vehicles, from truck to barge or whatever the configuration may be -- is such a thing as changing out belts -- just how extensive is modification?

I know we have repeated telephone conversations about the definition and phrasing of that, but perhaps there may be a need for clarification of that term, particularly as it relates to obtaining a permit.

9.1 you have spent some time discussing this morning. I followed a portion of that. I am not certain I followed the entire discussion, but whether or not it makes sense for the agency to have some thresholds in terms of issuance of permits or the denial of permits.

We have talked about companies filing applications, either because they know they have to or because you have told them they have to, but if that shields the applicant and permits him to operate while the application is being reviewed and perused by the agency, then I think it is appropriate.

However, if not, we could be strung out in administrative procedure for lack of personnel or for some other reasons and then we do not have the permit issued and the facility is down.

10.1 is read, again by me as a novice, with the changes that are projected in these regs as a possibility of having continuous testing requirements, and allow me to compliment Mr. Farley and the Commission because we in the coal industry have worked very well with them. They have been very cooperative.

If the Commission bus wrecks on the way to the picnic, however, and we have a whole new set of players, then I read 10.1 as it exists in these proposals to say the Director could find a reasonable time all the time for me to initiate testing of these facilities.

Those are my questions, and as I say, they may be addressed in simple discussion today. Thank you.

CHAIRMAN THOMAS: Thank you, sir. Any other comment? Mr. Parsons?

(Witness stands aside.)

(Witness sworn.)

THEREUPON,

B O B P A R S O N S

being first duly sworn to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION

MR. PARSONS: I am Bob Parsons, and I am going to follow up on what Bill said. I did not know -- or I guess we did not know each other was going to be here when we talked early this morning. I have two questions to start with.

Is this going to be filed as emergency rules?

MR. FARLEY: Yes. We have done an emergency rule, but because of the time line to get this permanent rule in place we have had to withdraw it and we will be refiling it just with those limited provisions already filed.

MR. PARSONS: Number two, how many affected sources do we have up in this very small area? How many coal handling operations and how many prep plants; do we know?

MR. DOUGLASS: One.

MS. NEELY: You are talking about
Follansbee?

MR. FARLEY: In the Follansbee area?

MR. PARSONS: Yes.

MR. FARLEY: Okay. Someone asked us the
question and we might even clarify that -- I mean, what do
we consider coal handling operations on the premises of
the manufacturing operations of Wheeling Pittsburgh Steel?

MR. PARSONS: That is my third question.

MR. FARLEY: I think we need to clear
that up because I think what we have done -- I believe
this is true -- is that in those larger facilities covered
by Regulation 7, we have said that Regulation 7 rules over
all their operations. So with that as a given this rule--
these limited provisions for Follansbee only covers today
one facility which is inactive.

MR. PARSONS: Which is inactive?

MR. FARLEY: Inactive.

MR. PARSONS: Thank you. I think this is
certainly a needed revision to the regulation under
Section 6.3, which limits us to that very small area
around Follansbee.

I only have two comments. I did have three, but Chairman Thomas covered one of them, to use the equivalent language, but my question on everything in there is isn't this much more stringent than any federal regulation for coal handling operations?

If it is, then of course, you know by the statute you have to make a finding that it is needed because of some reason.

MS. NEELY: This is a non-attainment area, isn't it?

MR. FARLEY: Right. If you want me to comment on that, the EPA in terms of issuing regs, they only do it -- what is called minimal standards, new source performance standards. We look at that as very general, 20 percent opacity on transfer points and all that stuff.

MR. PARSONS: Right.

MR. FARLEY: As far as what a state agency has to do to demonstrate attainment in terms of developing the rules and regulations, that is up to the agency.

MR. PARSONS: My point in bringing that up, Commissioner Neely, is it does appear on the surface

much more stringent than the federal regulations. The monitoring requirements in here, especially for coal handling facilities, is going to create an awful lot of paperwork. I hope you-all can handle it.

Down on Page 8 where we are talking about operating permits, the way that reads I take it this will be another permit. Now we currently get a Regulation 5 permit, a Regulation 13 permit, and we pay an annual operating fee if we are a coal handling operation or a prep plant.

Now we are going to have another operating permit. That means all the facilities out there that are currently permitted under Reg 5, 13, and the annual, now we are going to have to get another one.

MS. NEELY: No.

MR. KOPELMAN: This is Reg 5.

MR. PARSONS: But we are talking about an operating permit. Reg 5 is a registration permit, or was. In other words, I am sitting out there right now with three permits. I am operating. Now within 120 or 60 days or whatever you-all decide on I am going to have to get another permit.

MS. NEELY: I thought this was replacing that system.

CHAIRMAN THOMAS: Registration and the whole thing.

MR. PARSONS: But it is going to be the same information.

MR. KOPELMAN: It is intended --

MR. DOUGLASS: If you have one it is going to replace it.

MR. KOPELMAN: See, back in the good old days you registered and now that we are going into operating permits we are just trying to be consistent with the new reg on operating permits and this would be -- once Reg 30 is adopted, then this would be under the statute consolidated, so you wouldn't have it, but until Reg 30 is adopted --

MR. PARSONS: All I am saying is to alleviate the administrative workload, both on the Air Pollution Commission staff and the permittees out there, why don't you grandfather us in?

Then if you have changes like you just made some changes to this that need to be done four or

five years down the road, then do it, but don't charge us another thousand dollars and make us submit to you basically what we already have in place in the other permits, is all I am saying.

MR. KOPELMAN: No, there is no additional fee imposed.

MR. PARSONS: Okay. It is paperwork for paperwork's sake. That is just my comment.

I was quite amused at Mr. Kopelman trying to define willfully. It is kind of like that joke Gordon Bee told me once when he was being -- this is off the record.

MR. KOPELMAN: No, it is not.

MR. PARSONS: When he was being interviewed for the dean of the law school, there was three of them. He was the only one that had a law degree and they had a CPA and then a PhD in education and they all were pretty level on the interviews. So the people interviewing them said "Well, we have go to do something here to kind of differentiate."

They said, "Well, they are going to have to prepare a budget. Let's ask them a math question." So

they came in and said, "Well, what is four and four?" The CPA said eight. The education guy came in "What is four and four?" Eight. Then Dean Bee came in, the lawyer, "What is four and four?" He went over and pulled the shades down; "What do you want it to be?" That is what willful is.

I would suggest, though, that is going to cause problems, because really in my opinion Larry probably has another one and I think there are one or two attorneys back there and they all have a different opinion, but when you think of willfully you normally think of some sort of criminal activity of prosecution.

I think the way it is worded there you are unconstitutionally shifting the burden on the permittee to prove he is innocent of a willful violation rather than keeping the burden of proving he is guilty, which is our system. I just throw that out for what it is worth.

That is basically my comments. Thank you.

(Witness stands aside.)

CHAIRMAN THOMAS: Thank you. Is there

anyone else that would like to speak to Reg 5? Apparently none; any further comment from the Commissioners, questions?

MR. SCHOCK: Yes. I have one and that is in 10.4. In 10.4 we are referencing an existing EPA appendix. What happens if they change that, if they amend that or revise that?

Should there be something here "or as amended" so that we don't have to come back and --

MR. KOPELMAN: Unfortunately I believe, until our Supreme Court tells me otherwise, that the case involving the Fire Marshall of some 15 years ago where our Supreme Court said that we are not allowed to pass a regulation that may be changed prospectively by another third party -- now I believe it can be -- I believe, however, that it can be living and growing and changing as long as the conditions upon which that change are specifically set forth can be calculated.

For example, in Reg 30 as the Federal Clean Air Act Amendments require for fees, they have to be tied to a Consumer Price Index, and that may or may not be true because there has been some waffling on that, but

first it was required and it may not.

But in any case, I think the Commission could adopt an escalator based on the Consumer Price Index because there is something that is shown how it is derived and calculated and subject to a very precise determination, but to openly say that our reg would vary as the fed's would vary, I don't think we can do that. We are prohibited from that.

So to answer your question specifically, whatever is in Appendix A at the time that this reg becomes effective is Appendix A for the life of the reg until you amend the reg.

MR. SCHOCK: Okay, thank you.

MR. KOPELMAN: You are welcome.

CHAIRMAN THOMAS: Any other comments or questions?

MR. FARLEY: The only comment I would make in relation to Mr. Parsons' comment is that he was talking about the overlapping permits and all that sort of thing. Reg 13 is there. That is for construction modification. I think you-all understand that anyway.

Reg 5 today requires for a registration

that had to be done at some point and then these annual operating permits as we went into and discussed.

The only thing we are really doing which is substantial is we are expanding the operating permit coverage beyond wet preparation plants and thermal dryers but otherwise this is not anything new. If anything, it is less because we are dispensing with registration.

CHAIRMAN THOMAS: Is that all of the comments? With this we will conclude the hearing. It should be noted that the record will stay open for 30 days for any submittals, following which the Commission will consider final action regarding Regulation 5.

Do you move for adjournment of the hearing?

MR. SCHOCK: So moved.

CHAIRMAN THOMAS: Moved; second it?

MR. DOUGLASS: Second.

CHAIRMAN THOMAS: All those in favor signify by saying aye.

ALL COMMISSIONERS: Aye.

CHAIRMAN THOMAS: It is so ordered. We will take a few seconds breather and then reconvene for a

meeting of the Air Pollution Control Commission.


(WHEREUPON, the hearing
was concluded at 11:50 a.m.)

REPORTER'S CERTIFICATE

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

I, Donna Kay Miller, do hereby certify
that the foregoing is, to the best of my skill and ability,
a true and accurate transcript of all the testimony adduced
or proceedings as set forth in the caption hereof.

Given under my hand this 21st day of May,
1992.



Donna Kay Miller
Certified Court Reporter

*West
Virginia*



DEPARTMENT OF COMMERCE,
LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

State Capitol

Charleston, West Virginia 25305

304/348-3255

December 24, 1991

Ms. Judy Cooper
Director
Administrative Law Division
Secretary of State
Building 1, Suite 157-K
Charleston, WV 25305

Dear Ms. Cooper:

I am herein authorizing the Air Pollution Control Commission to file a hearing notice and proceed with its rule making process in the revision of 45CSR5 "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations".

Certain emergency revisions to 45CSR5 were recently adopted by the Commission with my prior authorization pursuant to federal Clean Air Act requirements. The proposed legislative rule revision and emergency revisions will be filed with your office in early January, 1992.

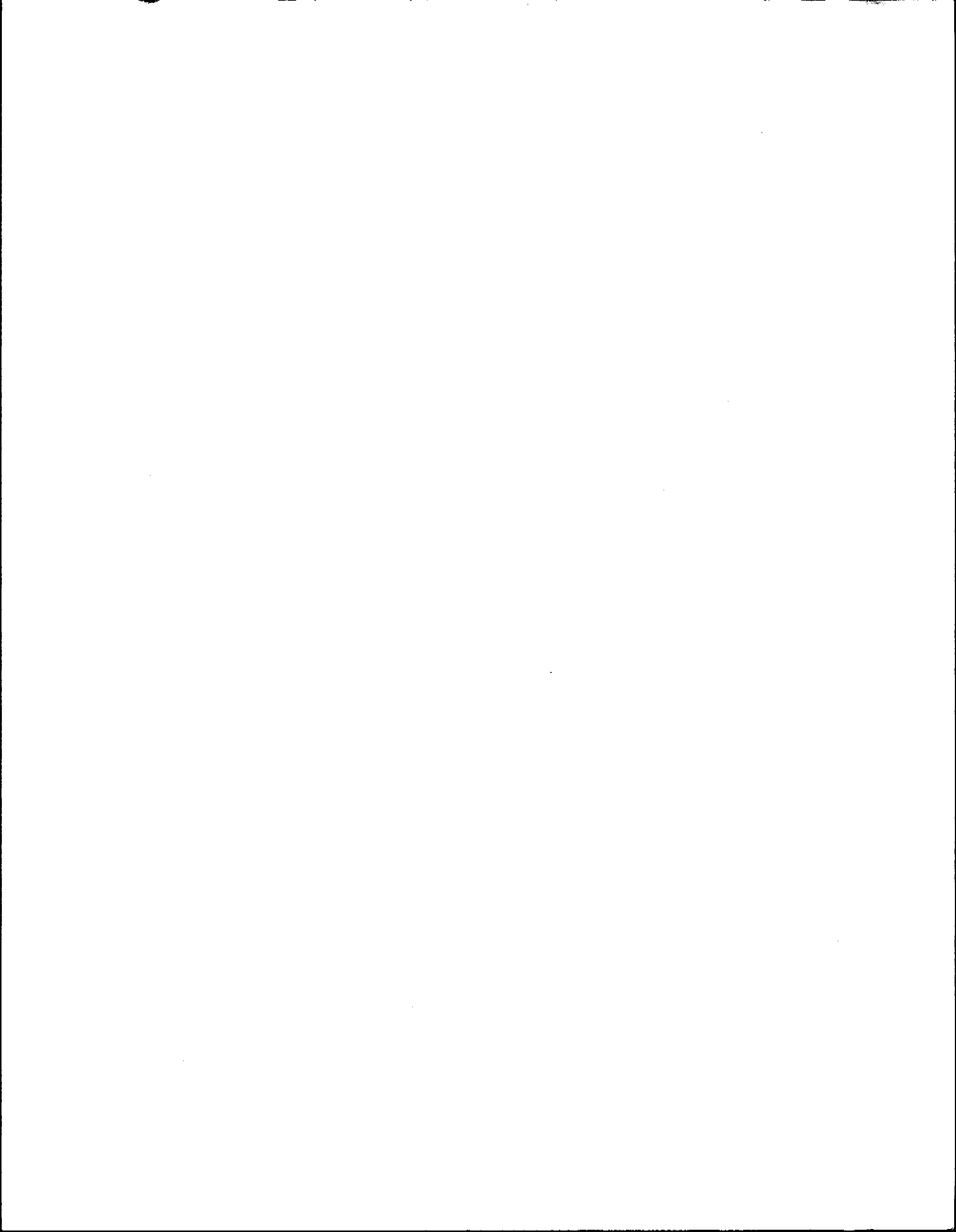
Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR-DF/tlm

cc: L. Newton Thomas, Jr.
Chairman, APCC

G. Dale Farley
Director, APCC





West Virginia Department of
Commerce, Labor & Environmental Resources
Air Pollution Control Commission

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WVAPCC Staff Response to the Governor's
Executive Order 8-92
(Effective July 1, 1992)

As a result of the Governor's Executive Order 8-92, questions have arisen as to the proper nomenclature for administrative functions. As of the effective date of the Executive Order (July 1, 1992):

"the name of the Division or the Director (of DEP), as may be appropriate, shall be deemed substituted for the name of the predecessor office or official in the Code; in any legal instrument or proceeding, including but not limited to existing agency rules, regulations or guidelines . . ." (Executive Order 8-92, Section 7(b)).

Revisions to rules and rules not in existence which are promulgated after the effective date of the Executive Order need to use current terminology.

Therefore, definitions of "Chief of Air Quality", "Division of Environmental Protection", and "Director" have been added or changed to reflect the status of operations since the implementation of the Executive Order.

In addition, in all areas where the term "Director" was previously used the term "Chief" or "Chief of Air Quality" is currently used. The term "Chief" or "Chief of Air Quality" has also been substituted for the term "Commission" in those areas which are not part of the Commission's appellate or rule-making authority.