WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #3

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OFFICE OF ... SECRETARY OF STATE

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

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

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

AMENDMENT TO AN EXISTING RULE: YES X , NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from Combustion of Refuse"

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.

Karen G. Watson, Attorney
Authorized Signature

$14.50

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR6 - "To Prevent and Control Air Pollution from Combustion of Refuse"

Type of Rule: ___X___ Legislative ______ Interpretive ______ Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

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

2. Explanation of above estimates: The revision proposed to 45CSR6, contained herein, will have a negligible effect on the costs to the Office of Air Quality for continued implementation of this rule. Costs are covered under previous budget estimates.

3. Objectives of these rules: The objective of this rule is to prevent and control particulate matter emissions from the open burning of refuse. This rule also sets particulate matter weight and visible emission standards for incinerators and incineration. This rule is part of the West Virginia State Implementation Plan approved by USEPA for the attainment and maintenance of attainment of the National Ambient Air Quality Standards for particulate matter.

4. Explanation of Overall Economic Impact of Proposed Rule.

   A. Economic Impact on State Government.

      See Section 2.

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

      The revisions proposed to rule 45CSR6 will have a negligible economic impact on industries and specific citizens group.

   C. Economic Impact on Citizens/Public at Large.

      The revisions proposed to 45CSR6 will have a minimal effect on citizens and the public at large. Some citizens who in the past were not required to notify the Office of Air Quality of open burning may now be required to do so.

Date: 6/11/99

Signature of Agency Head or Authorized Representative

Karen G. Watson

Karen G. Watson, Attorney

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

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

July 29, 1999

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

RE: 45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"

Dear Ms. Cooper:

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

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

Sincerely yours,

Michael P. Miano

Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: John Ailes
Rocky Parsons
Carrie Chambers

Questionnaire

DATE: August 6, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

LEGISLATIVE RULE TITLE: 45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse"

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

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 16, 1999 and July 14, 1999

b. What other notice, including advertising, did you give of the hearing?

I. Class I legal advertisement. *Charleston Daily Mail* and *CharlestonGazette*
II. Sent a copy of the Public Notice to our agency mailing list.
III. DEP's "*Public Notice Bulletin*" (June and July issues)
IV. Public Notices placed on agency's Web site: http://www.dep.state.wv.us/oaq/
V. Press Release

c. Date of Public Hearing (s) or Public Comment Period ended:

Public Hearing -- July 19, 1999
Public Comment Period ended -- July 28, 1999

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 6, 1999

f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

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

g. **IF DIFFERENT from item 'f',** please give Name, title, address and phone number (s) of agency person (s) who wrote and/or has responsibility for the contents of this rule: (Please type)

See "f" above

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 or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

RULE TITLE: 45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"

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

B. SUMMARY OF RULE:

45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse" seeks to control emissions from the combustion of refuse by the prohibition of open burning. The rule also establishes particulate matter weight and visible emission standards for incinerators and incineration.

The revisions contained herein are intended to streamline the requirements of this rule. These changes prohibit burning for the purposes of volume reduction and will clarify the definition of construction debris vs. land clearing debris. This rule does not prohibit bonfires, campfires or other forms of open burning for the purposes of personal enjoyment and comfort but establishes standards for open burning.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The purpose of 45CSR6 is to prevent and control particulate matter air pollution from the combustion of refuse in West Virginia. The rule also establishes weight and visible emission standards for incinerators and incineration and is part of the West Virginia State Implementation Plan (SIP) approved by the USEPA to assure attainment and maintenance of attainment with the National Ambient Air Quality Standards for particulate matter. The revisions proposed herein were initiated by the Office of Air Quality as part of a broad effort to modernize and streamline all the Office rules. The current revision process is also intended to update and harmonize this rule with other rules of the Office of Air Quality. The proposed revisions are the result of a thorough review in a stakeholder process that was inclusive of the Office of Air Quality, representatives of the regulated community, concerned citizens and the environmental community.

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

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

E. CONSTITUTIONAL TAKINGS DETERMINATION:

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

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

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

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

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

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

ATTENDING:

Advisory Council Members:

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

Environmental Protection:

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

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

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

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

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

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

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

Karen began by bringing the Council up to date on the status of two OAQ rules that were filed during the last session (or late in the session). 45CSR8 revised the ambient air quality for sulfur oxides and particulate matter, and 45CSR9 pertained to ambient air quality standards for carbon monoxide and ozone. The DC Circuit Court of Appeals has ordered EPA to show how they arrived at the new standards - EPA may go back to the previous standards. Karen also apprised the Council on the N_{ox} State Implementation Plan. The Circuit Court stayed the implementation of that rule and there are no plans to develop any other amendments in the immediate future. 45CSR28, which is the emissions trading rule that was filed late in the 1999 Session, was not taken up by the Legislature, but plans are to put the rule on the July agenda of the Interim Legislative Committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- **38CSR2 - "Surface Mining and Reclamation Rule"**
- **38CSR2A - "Rules for Mining and Restoration for Sandstone, Limestone, and Sand"**
- **38CSR2B - "Rules for Mining and Reclamation of Minerals Other Than Coal"**

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

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

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

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

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

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

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

199CSR1 - "SURFACE MINING BLASTING RULE"

Tony began by briefing the Council on the history of the Surface Mining Blasting Rule. This rule is being proposed to comply with SB681 - passed during the last session. This bill created the Office of Explosives and Blasting and the Office of Coalfield Community Development, which is under the West Virginia Development Office. The proposed rule will regulate blasting laws and rules associated with all surface-mining operations. All duties currently performed by OMR related to blasting, and all rules which now regulate blasting (38CSR2C) will be transferred to this new office. Besides regulating blasting on all surface mining operations, it will also implement and oversee pre-blast survey processes; maintain and operate a system to receive and address questions, concerns and complaints relating to mining operations; determine the qualifications for individuals and firms performing pre-blast surveys; establish the education, training, examination and certification of blasters; administer a claims process for property damage caused by blasting; and conduct a study of blasting and make recommendations regarding any appropriate rule or code changes.

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

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

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

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

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

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

Barb described the proposed "new" rule relating to Groundwater Protection Standards at Steam Electric Generating Facilities. She noted that the rule is a result of a Notice of Intent filed on October 24, 1994, by the West Virginia Steam Electric Generation Industry, with the Director of DEP, in accordance with 47CSR57 to apply for a class variance for all West Virginia power stations and associated disposal sites. At that time, DEP provided AEP and AP with the opportunity to conduct a four-year study to gather the necessary data to support their variance request. The objectives were met by assembling and reviewing data, estimating potential impacts to receptors, and performing an economic assessment impact analysis to the industry, commercial enterprises, and citizens at large if compliance with the Groundwater Protection Act were required without benefit of the variances. After review of the four-year study, the Director determined that granting this request for a variance at these locations would not pose adverse effects to human health or the environment. There are no human or environmental sensitive receptors between the coal storage areas or as ponds; therefore, it is unlikely there will be adverse affects. Barb gave each member a copy of the four-year study on which the Director made his determination.

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

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

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

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

Open Discussion:

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

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

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

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

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

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

SERIES 6
TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE

§45-6-1. General.

1.1. Scope.

1.1.a. The purpose of ~~Series 6~~ this rule is to prevent and control air pollution from combustion of refuse. Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonement of any emission which is released in any locality in such manner or amount as to cause or contribute to undesirable levels of air contaminants. Neither does it exempt nor excuse anyone from complying with other applicable laws, ordinances, regulations or orders of governmental entities having jurisdiction.

1.1.b. All persons engaged in any form of combustion of refuse shall give careful consideration to the effects of the resultant emissions on the air quality of the area(s) affected by such burning. Important considerations include, but are not limited to, the location and time of burning, the type of material being burned and the potential emissions and the prevailing meteorological conditions. Persons failing to give due consideration to these factors will be in violation of this rule.

1.1.c. It is the intent of the Director that all incorporated areas and other local governmental entities prohibit open burning and develop alternative methods for disposal of waste material. If such action is not taken in any air basin, air quality control region or other such areas as the Director may designate, then such action may be taken by the Director to insure compliance with air quality standards.

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

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

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

~~1.5. Incorporation by Reference -- Federal Counterpart Regulation. -- Not Applicable.~~

1.5. Former Rules -- This legislative rule amends 45CSR6 "To Prevent and Control Air Pollution From Combustion of Refuse" which was filed on April 1, 1995, and which became effective May 1, 1995.

§45-6-2. Definitions.

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

2.2. "Air Pollution Control Equipment" means any equipment used for collecting or converting gasborne particulate or gaseous materials for the purpose of preventing or reducing emission of these materials into the open air.

~~2.3. "Construction and Demolition Wastes" means combustible waste building materials and rubble resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings, pavements and other structures.~~

2.~~4~~3. "Director" means the ~~D~~director of the ~~West Virginia~~ ~~D~~division of ~~E~~environmental ~~P~~protection or such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

2.~~5~~4. "Flare", 'flare stack' means and includes a combustion source normally comprised of, but not limited to, a length of stack or pipe which has an attached burner mechanism designed to destroy liquid or gaseous material with an open or semi-enclosed flame.

2.~~6~~5. "Incineration" means the destruction of combustible refuse by burning in a furnace designed for that purpose. For the purposes of this rule, the destruction of any combustible liquid or gaseous material by burning in a flare/flare, thermal oxidizer or thermal catalytic oxidizer stack shall be considered incineration.

2.~~7~~6. "Incinerator" means any device used to accomplish incineration.

2.~~8~~7. "Incinerator Capacity" shall be the manufacturer's or designer's guaranteed maximum charging rate or such other rate as may be determined by the Director in accordance with good engineering practices. In case of conflict the determination by the Director shall govern. For the purpose of this rule, the total of the capacities of all furnaces within one system shall be considered as the "Incinerator Capacity".

2.~~9~~8. "Industrial Waste Incinerator" means an incinerator which is used to incinerate gaseous, liquid, semi-liquid and/or solid by-product waste from industrial sources.

2.9. "Land Clearing Debris" means that vegetative material generated by clearing of land for purposes of preparation for development, construction, mining or other such activity. Non-vegetative refuse is not included in this meaning.

2.10. "Opacity" means the degree to which smoke and/or particulate matter emissions reduce the transmission of light and obscure the view of an object in the background.

2.11. "Open Burning" means the combustion of refuse whereby the gaseous products of combustion are not conveyed through man-made means from one point to another and are discharged directly to the open air. This term includes "burn barrels" and air curtain incinerators.

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

2.13. "Pathological Waste Incinerator" means an incinerator used to dispose of animal and/or human tissue, bandages, medical wastes~~;~~ and medical laboratory wastes.

2.14. "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

2.15. "Refuse" means the useless and/or unwanted or discarded solid, liquid and/or gaseous waste materials resulting from community, commercial, industrial or citizen activities.

~~2.16. "Ringelmann Smoke Chart" means the Ringelmann's Scale for Grading the Density of Smoke, published by the United States Bureau of Mines, or any chart, recorder, indicator, device or method which is a standardized method for the measurement of smoke density and is approved by the Director as the equivalent of said Ringelmann Chart.~~

2.1~~7~~6. "Sewage Sludge Incinerator" means an incinerator which is used to incinerate the sludge produced by municipal or industrial sewage treatment plants.

2.1~~8~~7. "Smoke" means small gasborne and airborne particles emitted as the result of the combustion of refuse in sufficient numbers to be visible.

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

§45-6-3. Open Burning Prohibited.

3.1. General Provisions~~.--~~The open burning of refuse ~~for the purpose of volume reduction, elimination or product recovery~~ by any person, firm, corporation, association or public agency is prohibited except for the following exemptions:

3.1.a. Vegetation grown on the premises of a home or farm, provided that there is compliance with the provisions of sub~~section~~division 1.1.b~~.~~, and the health, safety, comfort and property of persons are protected from the effects of such burning.

3.1.b. Fires set for the purpose of bona fide instruction and training of public and industrial employees and members of volunteer fire departments in the methods of fighting fires, provided that approval to conduct such burning is received from the Director or the Director's duly authorized representative. Burning of structures for fire training is subject to specific requirements of 45CSR15, in particular, 40 CFR Part 61 Subpart M.

3.1.c. Open burning of ~~construction and demolition wastes~~ land clearing debris provided that all the following conditions are met:

3.1.c.1. There is no practical alternate method for the disposal of the material to be burned;

3.1.c.2. The health, safety, comfort and property of persons are protected from the effects of such burning;

3.1.c.3. Such burning shall not be conducted for salvage purposes; and~~;~~

3.1.c.4. ~~In non-rural areas a~~Approval to conduct such burning is received from the Director or the Director's duly authorized representative.

~~3.1.d. Backyard open burning for the reduction of refuse produced on the premises as long as the amount does not exceed that weight normally produced by the everyday living habits of one (1) family, until such families are serviced by a municipal or private refuse collection service.~~

3.1.~~e~~d. Open burning of propellant and explosive~~s~~ wastes, provided that the open burning is conducted in accordance with 45CSR25.

3.2. The exemptions listed in subsection 3.1 are subject to the following stipulation:

3.2.a. Upon notification by the Director, no person shall cause, suffer, allow or permit any form of open burning during existing or predicted periods of atmospheric stagnation. Notification shall be made by such means as the Director may deem necessary and feasible.

§45-6-4. Emission Standards for Incinerators and Incineration.

4.1. No person shall cause, suffer, allow or permit particulate matter to be discharged from any incinerator into the open air in excess of the quantity determined by use of the following formula:

Emissions (lb/hr) = F x Incinerator Capacity (tons/hr)

Where, the ~~F~~factor, F, is as indicated in Table I below:

Table I: Factor, F, for Determining Maximum Allowable Particulate Emissions

Incinerator Capacity	Factor F ~~Factor~~
A. Less than 15,000 lbs/hr	5.43
B. 15,000 lbs/hr or greater	2.72

4.2. After ~~the effective date of this rule~~September 1, 1969, in the Counties of Brooke, Hancock, Ohio, Marshall and Kanawha; and the Magisterial Districts of Valley (Fayette County), Scott and Pocatalico (Putnam County), Tygart (Wood County), the City of Fairmont and those portions of Union and Winfield Magisterial Districts west of I-79 (Marion County), no person shall cause, suffer, allow or permit the operation of any incinerator during the period starting one (1) hour before sunset and extending until two (2) hours after sunrise. This subsection shall not apply to the operation of pathological, industrial, municipal or sewage sludge incinerators.

4.3. Emission of Visible Particulate Matter~~.~~-- No person shall cause, suffer, allow or permit emission of smoke into the atmosphere from any incinerator which is ~~as dark or darker in shade or appearance than that designated as No. 1 on the Ringelmann Smoke Chart or the equivalent opacity of this Ringelmann number~~ twenty (20%) percent opacity or greater.

4.4. The provisions of subsection 4.3~~.~~ shall not apply to smoke~~, the shade or appearance of~~ which is less than ~~No. 2 on the Ringelmann Smoke Chart or the equivalent opacity of this Ringelmann number~~ forty (40%) percent opacity, for a period or periods aggregating no more than eight (8) minutes per start-up, or six (6) minutes in any sixty (60)-minute period for stoking operations.

4.5. No person shall cause, suffer, allow or permit the emission of particles of unburned or partially burned refuse or ash from any incinerator which are large enough to be individually distinguished in the open air.

4.6. Incinerators, including all associated equipment and grounds, shall be designed, operated and maintained so as to prevent the emission of objectionable odors.

4.7. Incineration of Residues and Hazardous Materials~~.~~--Persons responsible for the incineration of hazardous materials such as insecticides, empty insecticide containers, toxic materials, certain chemical residues, explosives, used bandages and other medical wastes, pathological wastes, human and animal remains and other like materials shall give the utmost care and consideration to the potential harmful effects of the emissions resulting from such activities. Evaluation of these facilities as to adequacy, efficiency and emission potential will be made on an individual basis by the Director, working in conjunction with other appropriate governmental agencies.

§45-6-5. Registration.

5.1. Within thirty (30) days after the effective date of this rule, all persons owning and/or operating incinerators within the state shall have registered with the Director on forms made available by the Director, 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 such other reasonable information as the Director may require including, but not limited to, make, model, capacity, operating temperature, fuel used, stack parameters and description of air pollution control equipment.

§45-6-6. Permits.

6.1. No person shall construct, modify or relocate any incinerator without first obtaining a permit in accordance with the provisions of W. Va. Code §§22-5-1 et seq. and 45CSR13.

§45-6-7. Reports and Testing.

7.1. At such reasonable times as the Director may designate, the operator of any incinerator shall be required to conduct or have conducted stack tests to determine the particulate matter loading, by using 40 CFR Part 60, Appendix A, Method 5 or other equivalent EPA approved method approved by the Director, in exhaust gases ~~when the Director has reason to believe, based on observed violations, that the stack emission limitation is being violated or for compliance testing~~. 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 the Director's authorized representative, may at the Director's option witness or conduct such stack tests. Should the Director exercise his option to conduct such tests, the operator will provide all the necessary sampling connections and sampling ports to be located in such manner as the Director may require, power for test equipment and the required safety equipment such as scaffolding, railings and ladders to comply with generally accepted good safety practices.

7.2. The Director, or the Director's duly authorized representative, may conduct such other tests as the Director may deem necessary to evaluate air pollution emissions other than those noted above.

§45-6-8. Variances.

8.1. If it can be demonstrated to the Director that the disposal of certain materials by any method other than burning leads to ground water contamination, then the person responsible for the disposal of such materials shall submit to the Director within sixty (60) days a program leading to the construction of a suitable incinerator. If such program is accepted by the Director, the person shall not be in violation as long as the program is observed.

8.2. Due to unavoidable malfunction of equipment, emissions exceeding those provided for in this rule may be permitted by the Director for periods not to exceed five (5) days upon specific application to the Director. Such application shall be made within twenty-four (24) hours of the malfunction. In cases of major equipment failure, additional time periods may be granted by the Director provided a corrective program has been submitted by the owner or operator and approved by the Director.

~~§45-6-9. Delayed Compliance Order.~~

~~9.1. The owner or operator of any incinerator in existence prior to the effective date of this rule which does not meet the emission limitations as specified in section 4.1 of this rule shall develop and submit to the Director, within such time as shall be allowed by the Director, an acceptable compliance program for the attaining and maintaining of the emission limitations of this rule as per section 4.1. The compliance program shall be embodied in a consent order as provided in W. Va. Code §22-1-6. Any owner or operator who is currently subject to a consent order that provides for compliance after the effective date of this rule shall be exempt from the requirements of this section.~~

~~9.2. In the event an owner or operator of an incinerator subject to this section fails to submit an acceptable control program within the time allowed, the Director shall, by final order, determine a reasonable control program for the attaining and maintaining of the emission limitations of this rule.~~

<u>§45-4-9. Inconsistency Between Rules.</u>

<u>9.1. In the event of any inconsistency between this rule and any other existing rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.</u>

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

ORIGINAL

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

<u>**45 CSR 6**</u> **"To Prevent and Control Air Pollution From Combustion of Refuse"**

Transcript of proceedings had at a public hearing in the above-styled matter for the West Virginia Division of Environmental Protection, Office of Air Quality at the Conference Room, 1558 Washington Street, East, Charleston, West Virginia, 25305, commencing at 6:23 p.m. on the 19th day of July 1999, pursuant to notice.

[redacted]

P R O C E E D I N G S

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

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

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

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

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

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

The purpose of this public hearing is to accept comment on 45 CSR 6, "To Prevent and Control Air Pollution from Combustion of Refuse." The purpose of the rule seeks to control emissions from the combustion of refuse by the prohibition of open burning in West Virginia.

The rule also establishes weight and visible emission standards for incinerators and incineration and is part of the West Virginia State Implementation Plan approved by the U.S. Environmental Protection Agency to assure attainment and maintenance of attainment with the National Ambient Air Quality Standards for particulate matter. The revisions proposed herein were initiated by the Office of Air Quality as part of a broad effort to modernize and streamline all the Office rules. The current revision process is also intended to update and harmonize this rule with other rules of the Office of Air Quality. The proposed revisions are the result of a thorough review in a stakeholder process that was inclusive of the Office of Air Quality, representatives of the regulated community, concerned citizens and the environmental community.

Upon authorization and promulgation of revisions to 45 CSR 6, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

The floor is now open for public comment. (No response.) There being nothing further, this public hearing for 45 CSR 6 is concluded.

(WHEREUPON, the hearing was

concluded at 6:25 p.m.)

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

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

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

Paula J Moore

Certified Court Reporter
Notary Public

My commission expires November 12, 2006.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
PAULA J. MOORE
223 NASH LANE
BUFFALO, WV 25033
My Commission Expires November 12, 2006

Division of Environmental Protection

Public Hearing: OAQ Legislative Rules - 2000 Session **Time/Date:** July 19, 1999 6:00 pm

45CSR6

NAME	ADDRESS	COMMENT YES	COMMENT NO
1. Conni Gratop Lewis · LW	4408 Venable Ave SE		
2. Tom O'Farrell	HC 80 Box 26A Gordon WV		
3. Bill Hauer	HC 65 Box 42-A Lookout WV		
4. Fred Durham	1615 Washington St, East		✓
5. Ken Ward	Charleston Gazette 1001 Virginia St, E, Chas		✓
6. Dan Miller	WVMRA 1624 Kanawha Blvd E. Charleston, WV 25311		
7. Laura Crowder	WVDEP OAQ 1558 Washington St E Charleston WV		✓
8. Earl Billingsley	"		✓
9. Jesse Adkins	"		✓
10. Robert Keatley	"		✓
11. Karen Watson	" 1615 Washington St. E, Chas 25311		✓
12. James Kotcon	412 Tyrone-Avery Road, Morgantown, WV 26505	✓	
13. Darrell Bollie	PO Box 68 Washington, WV 26180 GE Plastics		✓
14. Jim Nixon	WVDEP EAO 10 McJunkin Rd, Nitro 25143		
15. John Benedict	WVDEP OAQ Charleston		✓

Division of Environmental Protection

Public Hearing: OAQ Legislative Rules - 2000 Session **Time/Date:** July 19, 1999 6:00 pm

45CSR6

NAME	ADDRESS	COMMENT YES	COMMENT NO
1. Jim Mammers	Box 144 Crawley, WV 24931		
2. Joseph Robert	Box 66 Clintonville WV 24931		
3. Rick Wilson	PO Box 190 Clarksburg, WV 26302		X
4. Kathy G. Beckett	PO Box 553, Charleston, WV 25322	X	
5. Tim Mallan	301 Virginia St. E. Charleston, WV 25327	X	
6. [illegible]	[illegible] WV 26201		X
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

Cimmy
Karen
Laura
Robert
Earl

Karen

4406 Venable Ave SE
Charleston, WV 25304
July 28, 1999

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

Dear Mr. Kropp;

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

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

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

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

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

Sincerely

Conni Gratop Lewis

Conni Gratop Lewis

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

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

July 1, 1999

Dear Skipp:

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

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

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

Sincerely,

Marcia

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

		Date: 7/1/99
To	Skipp Kropp	
Office	West Virginia DEQ, Office of Air Quality	
Phone Number	304/558-2496	
Fax Number	304/558-3287	
Subject	Request for Extension of time to Submit Comments	
From	Marcia L Spink EPA PHONE: (215) 814-2104	FAX: (215) 814-2124

NUMBER OF PAGES INCLUDING COVER SHEET 2

ORIGINAL TO BE SENT: Yes ____ No ____

MESSAGE: Request for extension of time to submit comments on West Virginia proposed air quality rules.

Karen Earl

Karen Watson

Contractors Association of West Virginia

2114 Kanawha Boulevard, E. • Charleston, West Virginia 25311 • (304) 342-1166 FAX (304) 342-1074
www.cawv.org • cawv@cawv.org

July 27, 1999

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

Dear Chief Kropp:

The Contractors Association of West Virginia (CAWV) is a non-profit, trade organization representing over 450 firms that are involved directly and indirectly in the construction industry in West Virginia and surrounding states.

The CAWV is vitally interested in governmental regulatory programs that may impact its members and, to that end, has participated in the stakeholder process that has been conducted by the Office of Air Quality (OAQ) with respect to the revision of various air quality regulations. Certain changes to the regulations that had been requested by the CAWV in the course of the stakeholder process were not incorporated in the proposed rule that has been presented for public comment. The CAWV files these comments to identify what it believes are problems with the proposed regulations in the hope that the OAQ will consider further revisions.

The two regulations addressed by these comments are Series 6, "To Prevent and Control Air Pollution from Combustion of Refuse," and Series 17, "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter."

I. Comments on Proposed Revisions to Series 6:

The changes proposed to Series 6 that are of concern to the CAWV relate to open burning requirements. Under the current regulation there is a general prohibition on open burning with certain specified exceptions. Among the exceptions is the open burning of "construction and demolition waste," so long as four conditions are met. Those conditions are:

(1) There is no practical method for disposal of the material to be burned;

(2) The health, safety, comfort and property of persons are protected from the effects of the burning;

(3) The burning is not done for salvage purposes; and

(4) "In non-rural areas" approval to conduct such burning is received in advance.

See 45 CSR 6, § 3.1.c.

The proposed rule would change this exception by prohibiting the open burning of "construction and demolition waste" altogether and by allowing the open burning of "land-clearing debris" only with the approval (presumably in advance) of the West Virginia Division of Environmental Protection ("WVDEP"). The CAWV, in the course of the stakeholder process and as evidence of its good faith in seeking constructive and positive changes to the regulations, did not object to the elimination of the construction and demolition waste burning option. The CAWV did object, however, to the requirement that all burning of land-clearing debris must receive advance approval from the WVDEP, regardless of where and when the burning occurred. We believe this is an unnecessary restriction on construction operations, particularly in rural areas. Furthermore, while the approval of the DEP will be required in every instance, the proposed rule does not state that if the other three conditions on open burning are satisfied, such approval will be granted.

An additional concern raised by the CAWV in the stakeholder process is the absence of any time limits with respect to such approvals. Delays in granting such approvals can significantly impact construction schedules and result in onerous penalties being placed upon contractors. Although this generally has not been a problem in the past, and the OAQ has typically been responsive in providing approvals in non-rural areas, we are uncertain as to the timeliness with which approvals will be given with the proposed expansion of the open burning restrictions.

For these reasons, the CAWV urges that the proposed rule be revised by limiting the required approval for open burning of land-clearing debris to those activities occurring in "non-rural areas." In the alternative, should the DEP require such approval in all locations, we request that a time limit be inserted such that if a requested approval is not granted within seven (7) days of the request, the request will be deemed approved.

A. Policy on Open Burning:

The OAQ currently has a policy that provides guidance with regard to its existing open burning requirements. This guidance generally has been followed by our members in the course of their operations. We understand that the OAQ is currently considering a revision to the open burning policy due in part to changes that may result from these proposed rules. The CAWV respectfully requests that the open burning policy be made available for public review and comment. We have been provided with an early draft of the policy through the stakeholder process and appreciate the opportunity to review planned changes. However, we believe that formal adoption of such policy should occur only after there has been an opportunity for general public review and comment on the proposal.

II. Comments on Proposed Revisions to Series 17:

Series 17 has been a part of the regulations of the OAQ since at least 1979 and its purpose was to control particulate matter air emissions in certain counties in West Virginia where particular problems with air quality had been identified. Series 17 currently applies only to Kanawha County and selected portions of Fayette, Putnam, Wood and Marion counties. The proposed rule would revise Series 17 by expanding its coverage to encompass the entire state.

In addition, requirements applicable to construction and demolition activities are directly set out under the current rules. In contrast, very general requirements are set out in the proposed rule which prohibit discharges of fugitive particulate matter (dust) beyond boundary lines in a manner which causes or contributes to statutory air pollution. The proposed rule mandates, by implication, certain types of fugitive dust control activities that are to be followed in order to avoid violating the requirements of the rule. These activities include:

1) use, where practicable, of water or chemicals for control of particulate matter in demolition of existing buildings or structures, construction operations, grading of roads or the clearing of land;

2) the application of asphalt, water or suitable chemicals on unpaved roads, material stockpiles and other services which can create airborne

particulate matter;

3) covering of material transport vehicles, or treatment of cargo, to prevent contents from dripping, sifting, leaking or otherwise escaping and becoming airborne and prompt removal of tracked material from roads or streets; and

4) installation and use of hoods, fans and fabric filters to enclose and vent the handling of materials, including adequate containment of methods during sandblasting, abrasive cleaning or other similar operations. 45 CSR 17, § 3.2.

While these control requirements already appear in the current regulations, they are mandated only for a small area of our state.

The effect of the proposed changes to Regulation 17 is to create a new statewide regulatory program with regard to the control of fugitive dust. We believe this proposal is made without a demonstration that such a pervasive regulatory program is necessary to address general and widespread problems related to fugitive dust emissions. We have been unable at this point to identify the costs associated with statewide compliance with these requirements. However, we believe such costs would be significant.

The CAWV recommends that the OAQ retain the current approach with respect to the fugitive dust emissions, that is, first identify those specific locations of the state where such emissions have proven to be a problem, then specify the required controls. Should this require revisions to current § 2 of Series 17 with the specification of additional areas to which the regulation should be applied, the

CAWV would support such an approach.

III. Conclusion

The CAWV appreciates the opportunity to provide these comments to the OAQ with respect to the proposed changes to its regulations. We further appreciate the significant efforts made by the agency to allow open and free discussion with respect to its regulations in the course of the stakeholder process.

Should you have any questions concerning these comments, please contact me at 304-342-1166.

Sincerely,

Michael L. Clowser
Executive Director

cc: R.M. Brewer, CAWV President

Tammy
Karen
Laura
Earl
Robert

Karen
Watson

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

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

July 27, 1999

Dear Mr. Kropp:

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

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

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

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

Sincerely,

Marcia L. Spink for

Judith M. Katz, Director
Air Protection Division

Enclosures

cc: John Benedict

Comments on West Virginia Proposed Revisions

General Comments

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

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

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

45-2-2 Definitions

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

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

1. Section 8.1.a and 8.1.b allow the Director to approve equivalent test methods for determining compliance with opacity and mass emission limits. These provisions provide very broad Director's discretion. Although, States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test methods used to determine compliance with opacity or mass limits must be federally approved.

2. Section 8.2.a states that "such monitoring plan shall include, but not be limited to, one or more of the following: continuous measurement of emissions, monitoring of emission control equipment, periodic parametric monitoring, or such other monitoring as required by the Director." This provision appears to indicate that the Director could approve a monitoring plan which did not contain any of the following: monitoring of continuous emissions, monitoring emission control equipment, and parametric monitoring. A clarification should be provided to indicate if this is the intent of the provision, or if the intent was to allow the Director to require monitoring in addition to those types already identified.

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

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

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

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

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

45-3-2 Definitions

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

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

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

45-3-5 Permits

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

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

45-3-6 Reports and Testing

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

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

45-5-2 Definitions

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

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

45-6-7 Reports and Testing

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

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

45-7-10 Exemptions.

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

EPA.

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

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

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

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

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

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

FEB 15 1983

OFFICE OF
AIR, NOISE AND RADIATION

MEMORANDUM

SUBJECT: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions

Kathleen M. Bennett

FROM: Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation

TO: Regional Administrators, Regions I-X

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

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

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

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

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

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

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

Attachment

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Attachment

Attachment

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

Introduction

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

I. EXCESS EMISSION FROM MALFUNCTIONS

A. AUTOMATIC EXEMPTION APPROACH

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

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

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

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

1. To the maximum extent practicable the air pollution control equipment, process equipment, or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;

2. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;

3. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

4. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and

5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

II. EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, AND MAINTENANCE

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

enforcement discretion approach ?

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

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

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

not

Karen Earl Billy Laura Rupe Bill M Karen Watson

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July 27, 1999

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

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

Dear Chief Kropp:

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

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

45 CSR 2 - Particulate Emissions from Boilers

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

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

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

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

45 CSR 3 - Hot Mix Asphalt

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

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

45 CSR 4 - Objectionable Odors

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

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

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

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

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

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

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

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

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

45 CSR 6 - Combustion of Refuse

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

45 CSR 7 - Particulate Emissions from Manufacturing Processes

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

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

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

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

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

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

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

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

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

45 CSR 10 - Sulfur Oxides

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

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

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

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

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

45 CSR 17 - Fugitive Particulate Matter

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

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

45 CSR 18 - Meat Firing

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

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

45 CSR 16 - New Source Performance Standards

45 CSR 23 - Municipal Solid Waste Landfills

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

45 CSR 33 - Acid Rain

45 CSR 34 - Hazardous Air Pollutants

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

Respectfully, submitted this 27th of July, 1999.

Kathy G. Beckett

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FAX TRANSMISSION

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

Comments:

Attached are Comments on West Virginia Proposed Revisions.

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

July 27, 1999

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

Dear Mr. Kropp:

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

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

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

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

Sincerely,

Marcia L. Spink for

Judith M. Katz, Director
Air Protection Division

Enclosures

cc: John Benedict

Comments on West Virginia Proposed Revisions

General Comments

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

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

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

45-2-2 Definitions

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

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

1. Section 8.1.a and 8.1.b allow the Director to approve equivalent test methods for determining compliance with opacity and mass emission limits. These provisions provide very broad Director's discretion. Although, States may approve minor modifications to test procedures, alternative methods for determining compliance with opacity and mass emission limits cannot be approved solely by the State. Any alternative test methods used to determine compliance with opacity or mass limits must be federally approved.

2. Section 8.2.a states that "such monitoring plan shall include, but not be limited to, one or more of the following: continuous measurement of emissions, monitoring of emission control equipment, periodic parametric monitoring, or such other monitoring as required by the Director." This provision appears to indicate that the Director could approve a monitoring plan which did not contain any of the following: monitoring of continuous emissions, monitoring emission control equipment, and parametric monitoring. A clarification should be provided to indicate if this is the intent of the provision, or if the intent was to allow the Director to require monitoring in addition to those types already identified.

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

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

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

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

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

45-3-2 Definitions

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

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

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

45-3-5 Permits

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

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

45-3-6 Reports and Testing

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

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

45-5-2 Definitions

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

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

45-6-7 Reports and Testing

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

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

45-7-10 Exemptions.

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

EPA.

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

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

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

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

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

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

FEB 15 1983

OFFICE OF
AIR, NOISE AND RADIATION

MEMORANDUM

SUBJECT: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions

Kathleen M. Bennett

FROM: Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation

TO: Regional Administrators, Regions I-X

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

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

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

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

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

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

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

Attachment

Attachment

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

Introduction

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

I. EXCESS EMISSION FROM MALFUNCTIONS

A. AUTOMATIC EXEMPTION APPROACH

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

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

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

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

1. To the maximum extent practicable the air pollution control equipment, process equipment, or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;

2. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;

3. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

4. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and

5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

II. EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, AND MAINTENANCE

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

: inforcement discretion approach ?

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

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

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

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

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

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

The Chamber is a strong supporter of the stakeholder review process. The model where a state administrative agency invites the public to engage in an honest, thoughtful, open and informal exchange of interests and ideas with the goal of proposing public policy is an excellent one. Those who attended and participated in the meetings that have taken place over the past several months were presented with an opportunity to inquire as to the purpose of various provisions, question one another's needs, suggest solutions to issues, and propose language, all of which were presented to the Chief for his consideration. The more varied the vantage points of those engaged in the discussion the more creative the answer became. The Chamber applauds this process and encourages the agency and the public to look for other opportunities to engage in such an exercise.

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

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

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

45CSR6

TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE

RESPONSE TO COMMENTS

On July 19, 1999 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR6 - "To Prevent and Control Air Pollution from Combustion of Refuse." The Division of Environmental Protection, Office of Air Quality (OAQ) received written comments on the rule from the West Virginia Chamber of Commerce, the United States Environmental Protection Agency (US EPA) Region III, the Contractors Association of West Virginia, and Conni Gratop Lewis. In addition, two persons commented at the public hearing concerning all of the OAQ's proposed rules. Both commenters were generally supportive of the proposed rules and the stakeholder process that was utilized by the OAQ to generate the proposed rules. One comment was received from the United States Environmental Protection Agency, Region III, requesting that the public comment period be extended. The OAQ responded to this comment by extending the comment period from July 19, 1999, to July 28, 1999. The OAQ has summarized these comments and provides the following response.

I. Commenter: WV Chamber of Commerce

COMMENT A. <u>*Paragraph 3.1.c.4, Pre-approval of open burning of land clearing debris*</u>
The commenter recommends that the agency consider the development of an interpretive rule, or other appropriate administrative tool for implementation, that will provide guidance to the regulated community concerning the new requirement for approval to conduct burning of land clearing debris.

RESPONSE A. The OAQ is currently in the process of updating its open burning policy which will be embodied in an interpretive rule and will be subject to public comment.

II. Commenter: US EPA

COMMENT A. <u>*Subsection 7.1*</u>
Subsection 7.1 indicates that the Director may approve alternative stack test methods. Although States may make minor modifications to test procedures, alternative methods for determining compliance cannot be approved solely by the State. Therefore, any alternative stack test methods used to determine compliance with mass limits must be federally approved.

RESPONSE A. OAQ recognizes EPA's policy and guidance on Director's discretion and will revise this section to include the phrase "equivalent EPA approved method".

III. Commenter: Contractors Association of West Virginia

COMMENT A. *Pre-approval for open burning of land clearing debris*
The commenter expressed concern with the requirement to obtain pre-approval for the open burning of land clearing debris. Commenter is concerned that the language is not clear in stating that if the conditions listed in paragraphs 3.1.c.1, 3.1.c.2 and 3.1.c.3 are met the approval required in paragraph 3.1.c.4 will be granted.

RESPONSE A. The OAQ believes that the language is clear and states that if the first three conditions are met the OAQ will grant approval for the open burning of land clearing debris.

COMMENT B. *Timeframes*
The commenter is concerned with the lack of deadlines for approval or disapproval of open burning after such time as the request has been submitted. The commenter suggested a seven day timeframe for approval.

RESPONSE B. Timeframes and deadlines for approval were discussed during the stakeholder process. The OAQ believed that seven days was too short a period of time, due to manpower considerations. Stakeholders were concerned that setting a longer timeframe may encourage the OAQ inspectors to put off granting or denying permission until the deadline. The stakeholders were satisfied that the current process of approving or denying permission is working, therefore, it was decided not to establish any timeframes or deadlines in the rule and to consider establishing guidance in an interpretive rule.

COMMENT C. *Open burning policy*
Commenter noted that the OAQ currently is in the process of updating its open burning policy and has requested that the revisions be subject to the stakeholder process.

RESPONSE C. The open burning policy will be embodied in an interpretive rule and as such will be subject to public comment.

IV. Commenter: Conni Gratop Lewis

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

RESPONSE A. Timeframes and deadlines for approval were discussed during the stakeholder process. The OAQ believed that seven days was too short a period of time, due to manpower considerations. Stakeholders were concerned that setting a longer timeframe may encourage the OAQ inspectors to put off granting or denying permission until the deadline. The stakeholders were satisfied that the current process of approving or denying permission is working, therefore, it was decided not to establish any timeframes or deadlines in the rules and to consider establishing guidance in an interpretive rule.

COMMENT B. *The commenter expressed support for the stakeholder process and 45CSR6 as proposed.*

RESPONSE B. No response required.