WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

FORM #7

EFFECTIVE DATE Aug. 5, 1997

NOTICE OF AN EMERGENCY RULE

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

CITE AUTHORITY: W.Va. Code §§22-5-1 et seq. and §29A-3-15

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"

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

TITLE OF RULE BEING PROPOSED: ____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Please see attached documents.

John H. Johnston

John H. Johnston

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: 45CSR7- "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"

A. AUTHORITY: W.Va. Code §§ 22-5-1 et seq. and § 29A-3-15.

B. SUMMARY OF RULE:

The current version of 45CSR7 establishes a program of regulation to prevent and control particulate air pollution from manufacturing process operations in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects from excessive emissions of particulate matter from manufacturing process operations. The emergency rule establishes specific emissions performance standards for flame attenuation (pot and marble) fiberglass operations. 45CSR7 is part of the State Implementation Plan (SIP) for West Virginia and these changes are proposed as a revision to the State Implementation Plan. A counterpart permanent rule revision effecting the same amendments will be processed for SIP inclusion as well.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The proposed emergency rule will create specific performance standards appropriate to regulate the emissions of particulate matter from the individual stacks venting the fiber-forming zone of duplicate flame attenuation (pot and marble) fiberglass operations. Such a performance standard does not presently exist and it is not possible for the aforementioned manufacturing process to operate in compliance with the duplicate source provisions of Regulation 7. The specific performance standards established will adopt the emission limitations presently required under a state administrative consent order, CO-R&-95-7, with Johns Manville International, Inc. (the consent order was entered into by Schuller International, Inc., which has subsequently changed the corporate name to Johns Manville International, Inc.) regulating such sources. The limitations are based on the results of lengthy air quality modeling required by U.S. EPA, Region III. Please see the attached rationale document, Statement of Basis for Emergency Rulemaking.

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

There is no direct counterpart federal regulation for such existing sources. The proposed emergency rule is source-specific to the Johns Manville International, Inc. plant in Wood County.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

The Director has determined that this emergency rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America. The Director further finds that this rule is consistent with the requirements of chapter 22 article 1A of the W.Va. Code.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

After filing, this rule will be made available to the Council for its review and comment. Recommendations of the Council and the Director's response to Council's recommendations will be included in the permanent rule revision filing with the Secretary of State's Office and the Legislative Rulemaking Review Committee.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR7- "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"

Type of Rule: _X_ Legislative ____ Interpretive ____ Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1.

I. 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 above estimates reflect that there will be no anticipated changes in costs to administer this emergency rule.

3. Objectives of these rules: The emergency rule is sought to create a performance standard for a flame attenuation (pot and marble) fiberglass manufacturing operation in Wood County based on limitations required in a state administrative consent order. The proposed emergency rule will permit this type of manufacturing process to operate in compliance with Regulation 7 which is presently not possible because of the duplicate source provisions of this regulation. The proposed emergency rule will remain in effect for the statutory 15 month period or until a permanent rule revision obviates the need for such emergency rule.

The performance standard created by this emergency rule will protect the public health and safety and the environment from the effects of excessive emissions of particulate matter from this manufacturing process.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Please see section 2.

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

No impact above that resulting from the currently applicable administrative consent order affecting the relevant manufacturing process.

C. Economic Impact on Citizens/Public at Large.

No impact above that resulting from the currently applicable administrative consent order affecting the relevant manufacturing process.

Date: June 27, 1997

Signature of Agency Head or Authorized Representative

John H. Johnston
Chief, Office of Air Quality

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

SERIES 7
TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM MANUFACTURING PROCESS OPERATIONS

§45-7-1. General.

1.1. Scope. -- The purpose of Series 7 is to prevent and control particulate air pollution from manufacturing process operations.

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

1.3. Filing Date. -- October 7, 1993.

1.4. Effective Date. -- April 27, 1994.

§45-7-2. Definitions.

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

2.2. [RESERVED]

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

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

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

2.6. "Smoke" means small gasborne and airborne particulate matter emitted in sufficient numbers to be visible.

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

2.8. "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, or device which is standardized method for the measurement of smoke density which is approved by the Director as the equivalent of said Ringelmann Scale.

2.9. "Fugitive Particulate Matter" means any and all particulate matter generated by any manufacturing process which, if not confined, would be emitted directly into the open air from points other than a stack outlet.

2.10. "Fuel" means any form of combustible matter (solid, liquid, vapor, or gas) that is used as a source of heat.

2.11. "Air Pollution Control Equipment" means any equipment used for collecting or converting smoke and/or particulate matter for the purpose of preventing or reducing emission of these materials into the open air.

2.12. "Standard Conditions" means for the purposes of this rule a temperature of 68 degrees F and a pressure of 29.92 inches of mercury column.

2.13. "Stack" for the purpose of this rule, means but not be limited to any duct, control equipment exhaust, or similar apparatus, which is designed to vent gases containing particulate matter into the open air.

2.14. "Plant" means and includes all equipment, grounds, source operations, and any manufacturing process(es) utilized in an integral complex.

2.15. "Manufacturing Process" means any action, operation or treatment embracing chemical, industrial, or manufacturing efforts, and employing, for example, heat treating furnaces, by-product coke plants, core-baking ovens, mixing kettles, cupolas, blast furnaces, open hearth furnaces, heating and reheating furnaces, puddling furnaces, sintering plants, electric steel furnaces, ferrous and non-ferrous foundries, kilns, stills, driers, crushers, grinders, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, or gaseous matter.

2.16. "Process Weight" means that total weight of all materials introduced into a source operation, excluding solid, liquid, and gaseous fuels used solely as fuels, and excluding all process and combustion air.

2.17. "Process Weight Rate" means a rate established as follows:

2.17.a. For continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

2.17.b. For cyclical or batch unit operations, or unit processes, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period.

Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

2.18. "Physical Change" means for the purpose of this rule, any change in a substance which does not change the properties of the substance. Such changes include but are not limited to crushing, grinding, drying, change of state and sizing.

2.19. "Chemical Change" means for the purpose of this rule, any change in a substance which does change the properties of the substance and by which a new substance is formed.

2.20. "Source Operation" means the last operation in a manufacturing process preceding the emission of air contaminants which operation:

2.20.a. Results in the separation of air contaminants from the process materials or in the conversion of the process materials into air contaminants, and

2.20.b. Is not an air pollution abatement operation.

2.21. "A Duplicate Source Operation" means any combination of two (2) or more individual source operations of any size that have the same nomenclature, either formerly adopted and/or commonly sanctioned by usage such as but not limited to two or more rotary driers, basic oxygen furnaces, or electric arc furnaces contained in the same plant.

2.22. "Source Operation Type" means a categorization established as follows:

2.22.a. Type 'a' means any manufacturing process source operation involving glass melting, calcination or physical change except as noted in Type 'c' below.

2.22.b. Type 'b' means any metallurgical manufacturing process source operation. Gray iron cupolas located 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), and Union and Winfield (Marion County west of I-79) shall be classified as Type 'b' source operations.

2.22.c. Type 'c' means any wet cement manufacturing process source operation which is used for the primary purpose of calcination. Gray iron cupolas located in the areas of the state other than those defined in subsection 2.22.b shall be classified as Type 'c' source operations.

2.22.d. Type 'd' means any manufacturing process source operation in which materials of any origin undergo a chemical change unless otherwise classified.

Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of source operation type, the interpretation of the Director shall apply.

2.23. "By-Product Coke Production Facility" means the production of coke by the destructive distillation of coal in recovery type ovens in which gaseous and liquid distillates are separated and recovered as by-products, and includes any on-site coal preparation, charging, coking, coke pushing, hot coke transfer, coke quenching, coke handling and the separation and preparation of distillates.

2.24. "Non-Recovery Coke Production Facility" means the destructive distillation of coal in which the gaseous and liquid distillates are separated from coal, but not recovered as by-products, and includes any on-site coal preparation, charging, coking, coke pushing, hot coke transfer, coke quenching and coke handling.

2.25. "Offtake Piping" means the piping that transports gaseous by-products of the coking cycle from an oven to the coke oven gas collector main, such as standpipes, standpipe caps, goosenecks and slipjoints.

2.26. "Coke Battery Topside" means the top of the coke battery including, but not necessarily limited to, charging ports, charging port lids, inspection lids, refractory ceiling, offtake piping and the coke oven gas collector main.

2.27. "Topside Emissions" means any smoke and/or particulate matter emissions from one or more points on the topside of a coke oven battery excluding charging emissions.

2.28. "Charging Operation" means any operation or procedure by which coal is introduced into a coke oven. For coke oven batteries employing larry cars, the charging operation shall begin when the gate(s) on the larry car coal hopper is (are) opened or the mechanical feeders start the flow of coal into the first charging port(s) until the oven is completely charged and the last charging port lid is seated.

2.29. "Charging Port" means any opening through which coal is, or may be, introduced into a coke oven, whether or not such opening is regularly used for that purpose.

2.30. "Charging Emissions" means any smoke and/or particulate matter emissions from one or more charging ports, space between charging port rings and oven refractory, drop sleeves, larry car hoppers, or emissions from any devices used for the capture and cleaning of emissions resulting from charging operations but shall not include emissions resulting from the temporary removal of a charging port lid for the purpose of sweeping coal spillage into the oven just charged after all lids have been seated over the charging ports following removal of the larry car.

2.31. "Pushing Operation" means the removal of coke from a coke oven and shall begin when the coke mass starts to move and shall continue until the coke transfer car enters the quenching station.

2.32. "Pushing Emissions" means any smoke and/or particulate matter emissions resulting from the pushing operation.

2.33. "Transport Emissions" means any smoke and/or particulate matter emissions which are emitted once the transport of the hot coke begins during the pushing operation and continues until the coke transfer car enters the quenching station.

2.34. "Door Area" means the vertical face of a coke oven between two adjacent buckstays.

2.35. "Door Area Emissions" means any smoke and/or particulate matter emissions from any door area including, but not limited to, emissions from the door, chuck door, door seal, jamb, or refractory.

2.36. "Quenching Operation" means the process by which the combustion of hot coke is stopped by application of water or any other procedure achieving the same effect.

2.37. "Quenching Emissions" means any smoke and/or particulate matter emissions resulting from the quenching operation.

2.38. "Ferroalloy Electric Submerged Arc Furnace" means any furnace used in production of ferroalloys wherein electrical energy is converted to heat energy by transmission of current between electrodes partially submerged in the furnace charge.

2.39. "Furnace Charge" means any material introduced into a ferroalloy electric submerged arc furnace, and may consist of, but is not limited to, ores, slag, carbonaceous material, and limestone.

2.40. "Tapping" means the removal of product and slag from a ferroalloy electric submerged arc furnace under normal operating conditions, such as removal of metal under normal pressure and movement by gravity down the spout into a ladle.

2.41. "Blowing Tap" means any tap associated with ferroalloy submerged arc furnace in which an evolution of gas forces or projects jets of flame or metal sparks beyond the ladle, runner, or collection hood.

2.42. "Poling" shall mean pushing a log timer into the furnace taphole to clear slag from the furnace tapping channel associated with operation of a ferroalloy electric submerged arc furnace.

2.43. "Oxygen Lancing" shall mean the burning open of a taphole to remove slag or product from the taphole associated with operations of a ferroalloy electric submerged arc furnace.

2.44. [RESERVED]

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

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.

§45-7-3. Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement.

3.1. No person shall cause, suffer, allow or permit emission of smoke and/or particulate matter into the open air from any process source operation which is darker in shade or appearance than that designated as No. 1 Ringelmann or twenty (20) percent opacity, except as noted in subsections 3.2, 3.3, 3.4, 3.5, 3.6, and 3.7.

3.2. The provisions of subsection 3.1 shall not apply to smoke and/or particulate matter emitted from any process source operation which is less than No. 2 Ringelmann or forty (40) percent opacity for any period or periods aggregating no more than five (5) minutes in any sixty (60) minute period.

3.3. No person shall cause, suffer, allow, or permit the emission of smoke and/or particulate matter into the open air in excess of the following provisions from the operation of a by-product coke production facility in production on the effective date of this rule or a by-product coke production facility which is constructed as a replacement for a by-product coke production facility which shut down not more than three (3) years prior to the effective date of this rule:

3.3.a. Charging emissions from charging of any four consecutive ovens shall not exceed an aggregate time of more than one hundred (100) seconds.

3.3.b. Pushing emissions from pushing shall be vented into air pollution control equipment. Particulate matter emissions discharged from this air pollution control equipment shall not exceed a mass particulate rate as determined by the following formula:

$$E = C^{.09}$$

Where E = particulate matter emissions rate in pounds per push and C = actual charge of coal in tons per oven.

The smoke and/or particulate matter emissions discharged from this air pollution control equipment and noncaptured pushing emissions shall not exceed twenty percent (20%) opacity.

3.3.c. Transport emissions from an enclosed quench car shall not exceed twenty percent (20%) opacity. Transport emissions from an open quench car shall not exceed ten percent (10%) opacity except that batteries employing pushing emissions control systems that were constructed prior to July 1, 1982 and which do not involve enclosed quench cars during transport shall meet the provisions of sections 3.1 and 3.2.

3.3.d. Coke side sheds and similar structures used to capture pushing emissions shall be designed and operated so as to prevent the escape of smoke and/or particulate matter from points other than the stack of the air pollution control equipment.

3.3.e. Coke oven topside emissions shall not exceed the following:

e.1. No more than two percent (2%) of the charging ports or charging port lids shall have smoke and/or particulate matter emissions excluding the last oven charged.

e.2. No more than ten percent (10%) of the off-take piping shall have smoke and/or particulate matter emissions.

e.3. No smoke and/or particulate matter emissions are permitted from the coke oven gas collector main or any other topside point except as provided by 3.3.e.1 or 3.3.e.2.

3.3.f. No more than ten percent (10%) of the door areas of operating coke ovens shall have door area emissions, excluding the door areas representing the last oven charged.

3.3.g. Quench towers shall employ as a minimum good baffle design with make-up water from the receiving stream, except that the blowdown from scrubbers of a pushing emission control system, dedicated to a specific battery, may be used as make-up water for the quench tower of that battery so long as suspended solids do not exceed two hundred (200) milligrams per liter. For batteries which this section applies the receiving stream shall be the Ohio River.

3.3.h. Smoke and/or particulate matter emissions from combustion stacks shall meet the requirements of subsections 3.1 and 3.2 and shall not exceed a concentration of 0.040 grains per dry standard cubic foot.

3.3.i. Good operating practices must be maintained to prevent the atmospheric entrainment of particulate matter resulting from the spillage or other deposition of coal and/or coke.

3.4. No person shall cause, suffer, allow, or permit the emission of smoke and/or particulate matter into the open air in excess of the following provisions from the operation of a new by-product coke production facility, other than a replacement by-product coke production facility that is constructed as per the provisions of subsection 3.3, that begins production after the effective date of this rule:

3.4.a. Charging emissions from the charging of any four (4) consecutive ovens shall not exceed an aggregate time of more than sixty (60) seconds.

3.4.b. Pushing emissions from pushing shall be vented into air pollution control equipment. The particulate matter emissions discharged from this air pollution control equipment shall not exceed a mass emission rate of 0.04 lb/ton of coal charged. The smoke and/or particulate matter emissions discharged from this air pollution control equipment and non-captured pushing emissions shall not exceed twenty percent (20%) opacity.

3.4.c. Transport emissions from an enclosed quench car shall not exceed twenty percent (20%) opacity. Transport emissions from an open quench car shall not exceed ten percent (10%) opacity.

3.4.d. Coke side sheds and similar structures used to capture pushing and/or quenching emissions shall be designed and operated so as to prevent the escape of smoke and/or particulate matter emissions from points other than the stack of the air pollution control equipment.

3.4.e. Coke oven topside emissions shall not exceed the following:

e.1. No more than two percent (2%) of the charging ports or charging port lids shall have smoke and/or particulate matter emissions excluding the last oven charged.

e.2. No more than five percent (5%) of the offtake piping shall have smoke and/or particulate matter emissions.

e.3. No smoke and/or particulate matter emissions are permitted from the coke oven gas collector main or any other topside point, except as provided by 3.4.e.1. and 3.4.e.2.

3.4.f. No more than eight percent (8%) of the door areas of operating coke ovens shall have door area emissions, excluding the door areas representing the last oven charged. Any battery affected by subsection 3.4 shall be constructed in a manner that will allow for the retrofitting of the battery with hooding to capture door emissions and air pollution control equipment designed to at least a ninety percent (90%) particulate control efficiency.

3.4.g. Quench towers shall employ, as a minimum, multiple row baffles and use make-up water not to exceed eight hundred (800) milligrams per liter of total dissolved solids and one hundred (100) milligrams per liter of total suspended solids.

3.4.h. Smoke and/or particulate matter emissions from combustion stacks shall meet the requirements of subsections 3.1 and 3.2 and shall not exceed a grain loading of 0.025 grains per dry standard cubic foot.

3.4.i. Good operating practices must be maintained to prevent the atmospheric entrainment of particulate matter resulting from the spillage or other deposition of coal/coke.

3.5. No person shall cause, suffer, allow, or permit the emission of smoke and/or particulate matter into the open air in excess of the following provisions from the operation of a non-recovery coke production facility:

3.5.a. Charging emissions from charging of any five (5) consecutive ovens shall not exceed an aggregate time of more than fifty (50) seconds.

3.5.b. No more than two percent (2%) of the coal charging ports shall have smoke and/or particulate matter emissions.

3.5.c. No more than two percent (2%) of the coke oven doors shall have smoke and/or particulate matter emissions excluding the ovens being charged and/or pushed.

3.5.d. Pushing emissions shall be vented to air pollution control equipment. The particulate matter emissions from this air pollution control equipment shall not exceed a mass emission rate as determined by the following formula:

$$E = C^{.09}$$

Where E = particulate emission rate in pounds per push and C = actual charge of coal in tons per oven.

The smoke and/or particulate matter emissions discharged from the air pollution control equipment and non-captured pushing emissions shall not exceed twenty percent (20%) opacity.

3.5.e. Transport emissions from an enclosed quench car shall not exceed twenty percent (20%) opacity. Transport emissions from an open quench car shall not exceed ten percent (10%) opacity.

3.5.f. Coke side sheds and similar structures used to capture pushing and/or quenching emissions, shall be designed and operated so as to prevent the escape of smoke and/or particulate matter emissions from points other than the stack of the air pollution control equipment.

3.5.g. Quench towers shall employ as a minimum, multiple row baffles and use make-up water not to exceed eight hundred (800) milligrams per liter of total dissolved solids and one hundred (100) milligrams per liter of total suspended solids.

3.5.h. Smoke and/or particulate matter from the combustion stack shall meet the requirements of subsections 3.1 and 3.2. The particulate emissions rate from combustion stacks shall not be greater than 0.060 grains per dry standard cubic foot or 1.0 lb/ton of coal charged, whichever is most restrictive.

3.5.i. Good operating practices must be maintained to prevent the atmospheric entrainment of particulate matter resulting from the spillage or other deposition of coal and/or coke.

3.6. The provisions of subsections 3.1 or 3.2 shall not apply to smoke and/or particulate matter emitted from the roof monitor(s) of a basic oxygen process or from a blast furnace cast house. The following provisions will apply:

3.6.a. Visible emissions from a basic oxygen process roof monitor shall not exceed twenty percent (20%) opacity except for a period or periods aggregating no more than three (3) minutes in any sixty (60) minute period where the average opacity for the aggregated period shall not exceed forty percent (40%) opacity.

3.6.b. Visible emissions from a blast furnace cast house shall not exceed twenty percent (20%) opacity except for a period or periods aggregating no more than five (5) minutes in any sixty (60) minute period where the average opacity for the aggregated period shall not exceed forty percent (40%) opacity.

3.7. No person shall cause, suffer, allow, or permit emissions of smoke and/or particulate matter into the open air from any storage structure associated with any manufacturing process.

§45-7-4. Control and Prohibition of Particulate Emissions by Weight from Manufacturing Process Source Operations.

4.1. No person shall cause, suffer, allow, or permit particulate matter to be vented into the open air from any type source operation or duplicate source operation, or from all air

pollution control equipment installed on any type source operation or duplicate source operation in excess of the quantity specified under the appropriate source operation type in Table 45-7A found at the end of this rule.

4.2. Mineral acids shall not be released from any type source operation or duplicate source operation or from all air pollution control equipment installed on any type source operation or duplicate source operation in excess of the quantity given in Table 45-7B found at the end of this rule.

4.3. No person shall circumvent the provisions of this rule by adding additional gas to any exhaust or group of exhausts for the purpose of reducing the stack gas concentration.

4.4. If a duplicate source operation that meets the requirements of this rule is expanded or if a source operation that meets the requirements of this rule is expanded to form a duplicate source operation, the total allowable emission rate for the expanded portion shall be determined by the following formula:

$$R_e = \left(\frac{W_e}{W_{et}} \right) R_{et}$$

Where,

R_e is the total allowable emission rate in pounds per hour for the new expanded portion of the duplicate source operation;

W_{et} is the total operating process weight rate in pounds per hour of the source operation or duplicate source operation prior to expansion plus the operating process weight rate of the new expanded portion;

R_{et} is allowable emission rate in pounds per hour found in subsection 4.1 opposite the process weight rate, W_{et};

W_e is the operating process weight rate in pounds per hour for the new expanded portion.

4.5. Separate stack emission rates for the new expanded portions of concern in subsection 4.4 shall be calculated as per subsection 4.9. The applicable stack emission rate(s) so calculated shall be additive with the existing emission rate for any stack used to vent both an existing source operation or duplicate source operation(s) and addition(s) or portion(s) thereof.

4.6. The operating process weight for new plants which will contain duplicate source operations shall include the total process weight of those duplicate units to be installed during the initial five (5) year operating period.

4.7. Except as noted in subsection 4.8, the increase of the operating process weight rate of any manufacturing process source operation or duplicate source operation by the operation of new, replacement, reactivated, and/or altered source operation(s) shall be considered as an expansion and the allowable emission rates from the source operation(s) which resulted in the increase shall be determined as per subsection 4.4.

4.8.

4.8.a. Type 'b' duplicate source operations whose air pollution control equipment efficiency is a minimum of ninety-nine percent (99%) by weight and whose total process weight rate is less than two hundred fifty thousand (250,000) pounds per hour shall be exempted from the requirements of subsection 4.1 provided that smoke emitted into the open air from any such duplicate source operation is not as dark or darker in shade or appearance than that designated as No. 1 Ringelmann or twenty percent (20%) opacity. If a duplicate source operation is expanded by the addition of a new source operation(s) and the total operating process weight rate is then greater than two hundred fifty thousand (250,000) pounds per hour, the allowable emission rates from the source operation which resulted in the increase above two hundred fifty thousand (250,000) pounds per hour shall be determined as per subsection 4.4.

4.8.b. Primary aluminum reduction potlines which are equipped with a fluidized bed reactor or other similar gas cleaning device which utilizes particulate matter as a media or as a component of a media for collecting or reducing the emissions of gaseous fluorides, shall be exempted from the requirements of subsections 4.1 and 4.4 provided that:

b.1. At least ninety-nine percent (99%) of the gaseous fluoride is removed from the exit gas stream by such device prior to discharging the cleaned gas stream to the open air; and

b.2. The particulate matter loading in the exit gas stream is not greater than 0.01 grains per standard cubic foot of dry stack gas; and

b.3. The smoke emitted into the open air from any such duplicate source operation is not as dark or darker in shade or appearance than that designated as No. 1 Ringelmann or twenty percent (20%) opacity. If a duplicate source operation is expanded by the addition of new source operation(s) and the total operating process weight rate is then greater than two hundred fifty thousand (250,000) pounds per hour, the allowable emission rates from the source operation which resulted in the increase above two hundred fifty thousand (250,000) pounds per hour shall be determined as per subsection 4.4.

4.8.c.

c.1. The emissions of gaseous fluorides and particulate fluorides from prebake cells within an existing primary aluminum plant in operation on or before January 26, 1976, shall be controlled by a system for continuous emission reduction which system shall achieve at least ninety percent (90%) fluoride emissions capture efficiency through its primary collection system and at least ninety-nine percent (99%) fluoride emissions removal efficiency through its primary removal system; and

c.2. Anode butts from such a plant which are recycled in an on-site anode bake plant shall be cleaned as necessary to minimize adherent fluoride bearing bath material.

4.9. Where more than one source operation or combinations thereof, which are part of a duplicate source operation, are vented through separate stacks, the allowable stack emission rates for the separate stacks shall be determined by the following formula:

$$R_s = R_t \left(\frac{W_s}{W_t} \right)$$

Where,

R_s is the allowable stack emission rate for the separate stack venting the source operation(s) in question;

R_t is the total allowable emission rate for the duplicate source operation;

W_s is the operating process weight rate for the source operation(s) vented through the separate stack;

W_t is the total operating process weight rate for the duplicate source operation.

4.10. The provisions of subsections 4.1; 4.4 and 4.9 shall not apply to the coking of coal.

4.11. The provisions of subsection 4.1 shall not apply to sinter processes, basic oxygen processes, blast furnace cast house operations, machine scarfing operations and hot metal transfer operations employed in the manufacturing of steel. The following provisions shall apply:

4.11.a.

a.1. Particulate matter emissions shall not exceed a concentration of 0.030 grains per dry standard cubic foot from a sinter strand windbox.

a.2. Particulate matter emissions shall not exceed a concentration of 0.020 grains per dry standard cubic foot from a sinter strand discharge.

a.3. Particulate matter emissions shall not exceed a concentration of 0.020 grains per dry standard cubic foot from the entry and exit ends of a sinter cooler.

4.11.b.

b.1. Particulate matter emissions from the stack of the main (primary) air pollution control equipment of a basic oxygen process, including emissions from fuel firing in an integral waste heat boiler, shall not exceed 0.11 lbs/ton of steel produced.

b.2. Particulate matter emissions from basic oxygen process secondary air pollution control equipment shall not exceed a concentration of 0.020 grains per dry standard cubic foot. The air pollution control device shall capture and control emissions from hot metal and scrap charging, tapping, turndown, slagging, and as required to control slopping emissions.

4.11.c. Particulate matter emissions from any blast furnace cast house air pollution control equipment shall not exceed a concentration of 0.020 grains per dry standard cubic foot.

4.11.d. Particulate matter emissions shall not exceed a concentration of 0.040 grains per dry standard cubic foot from hot metal transfer from torpedo car to BOF charging ladle during periods when hot metal transfer is actually performed.

4.11.e. Particulate matter emissions shall not exceed a concentration of 0.030 grains per dry standard cubic foot from a machine scarfing operation during periods in which scarfing is actually being performed.

4.12. The provisions of subsections 4.1, 4.4 and 4.9 shall not apply to petroleum coke calcining kilns in existence on April 1, 1982, provided that particulate matter vented into the open air from each kiln, measured in pounds per hour, shall not exceed the amounts as determined by the following formulas:

4.12.a. When manufacturing regular (amorphous) coke:

$$E = 3.64P^{0.67}$$

Where E = allowable emission rate and P = the process weight rate in tons per hour, provided, however, that no kiln manufacturing regular (amorphous) coke shall exceed a maximum emission rate of fifty (50) pounds per hour.

4.12.b. When manufacturing graphite (crystalline) coke:

$$E = 16.89P^{0.67}$$

Where E = allowable emission rate in pounds per hour, and P = process weight rate in tons per hour, provided, however, that no kiln manufacturing graphite (crystalline) coke shall exceed a maximum emissions rate of two hundred (200) pounds per hour.

Provided further that each such kiln is equipped with an incinerator that will be operated at a temperature of not less than 1600 degrees F and have a residence time of twelve (12) seconds or longer when calcining regular coke and twenty-four (24) seconds or longer when calcining graphite coke, and provided further that, in the event a plant has more than one kiln, such plant shall be operated so that only one (1) of such kilns shall calcine graphite coke at any one time.

4.13. Any stack serving any process source operation or air pollution control equipment on any process source operation shall contain flow straightening devices or a vertical run of sufficient length to establish flow patterns consistent with acceptable stack sampling procedures.

4.14. Potential Hazardous Material Emissions

Persons responsible for manufacturing process source operations from which hazardous

particulate material may be emitted such as, but not limited to, lead, arsenic, beryllium, and other such materials shall give the utmost care and consideration to the potential harmful effects of the emissions resulting from such activities. Evaluations 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.

4.15.a. No person shall cause, suffer, allow or permit the discharge of particulate matter in excess of 48.63 actual pounds per hour from all collection stacks in existence at any plant on June 1, 1993 which produces fiberglass insulation or other fiberglass products using the flame attenuation method.

b. The owner or operator of any facility subject to this subsection shall meet the following specific allowable emission rates for the designated collection stacks through which particulate matter is discharged; provided, however, the stacks may not exceed the total allowable emission rate set forth in paragraph 14.15.a above. The particulate matter concentration discharged from any collection stack may not exceed .018 gr/dscf; the source may, however, vary the emission rates among the stacks by filing written notice thereof with the Chief of the Office of Air Quality at least seven (7) business days in advance of any such alteration. The written notice shall contain the following: 1) the altered emission rates for each affected stack; 2) the rationale and supporting data, information or calculations used to derive the altered emissions rates; 3) an indication of whether any new product not previously produced by the plant will be made on the affected lines; 4) whether any new binder or resins not previously used by the plant will be used in the altered operating scenario subject to the notice; and 5) whether any other parameters and/or related recordkeeping forms are impacted by the alteration. Such changes must comply with the total allowable emission rate from all such stacks and may not exceed the per stack concentration limit set forth herein.

Stack ID	Proposed Emission Rate (lbs./hr.)
41N	3.25 (total)
41S	
42N	4.64 (total)
42S	
43N	4.88 (total)
43S	
44N	2.68 (total)
44S	
45N	9.25 (total)
45S	
46N	10.00 (total)
46S	
47	6.49
48	4.38
49	3.06

c. Source operations subject to this subsection shall not be subject to the other provisions of Section 4 except for subsections 4.2, 4.3, and 4.14.

§45-7-5. Control of Fugitive Particulate Matter.

5.1. No person shall cause, suffer, allow, or permit any manufacturing process generating fugitive particulate matter to operate that is not equipped with a system to minimize the emissions of fugitive particulate matter. To minimize means that a particulate capture or suppression system shall be installed to ensure the lowest fugitive particulate emissions reasonably achievable.

5.2. The owner or operator of a plant shall maintain dust control of the plant premises, and plant owned, leased or controlled access roads, by

paving, application of asphalt, chemical dust suppressants or other suitable dust control measures. Good operating practices shall be implemented and when necessary dust suppressants shall be applied in relation to stockpiling and general material handling to prevent dust generation and atmospheric entrainment.

5.3. The provisions of sections 3.1, 3.2, and 5.1 shall not apply to particulate matter emitted from the operation of a ferroalloy electric submerged arc furnace in existence prior to June 1, 1993 during blowing taphole events, poling, and oxygen lancing operations. Poling emissions shall not exceed five (5) minutes in duration during any poling operation.

§45-7-6. Registration.

After the effective date of this rule all persons owning and/or operating an existing manufacturing process source operation not previously registered shall register such source operation with the Director. The information required for registration shall be determined by the Director, and shall be provided in the manner specified by the Director.

§45-7-7. Permits.

No person shall construct, modify, or relocate any manufacturing process source operation without first obtaining a permit in accordance with the provisions of W. Va. Code §22-5-1, et. seq., and Series 13 and 19 of Title 45.

§45-7-8. Report and Testing.

8.1. At such reasonable times as the Director may designate the operator of any manufacturing process source operation may be required to conduct or have conducted stack tests to determine the particulate matter loading in exhaust gases when the Director has reason to believe that the stack emission limitations(s) is/are being violated. Such tests shall be conducted in such manner as the Director may specify and be filed on forms and in a manner acceptable to the Director. The Director, or his duly authorized representative, may at his option witness or conduct such stack tests. 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.

8.2. The Director, or his duly authorized representative, may conduct such other tests as he or she may deem necessary to evaluate air pollution emissions.

§45-7-9. Compliance Programs and Schedules.

9.1. In the event that process equipment or operations in existence prior to the adoption of this rule do not meet the emission limitations, an

acceptable program to fully comply with the rule shall be developed and offered to the Director by the person responsible for the installation. This program shall be submitted upon the request of and within such time as shall be fixed by the Director. Once this program has been approved by the Director, the owner and/or operator of such installation shall not be in violation of this rule so long as the approved or amended program is observed. Compliance programs, schedules, and variances that have previously been issued by the Director under Series 7 (1974) shall remain in effect until the expiration date of that compliance program, schedule, or variance.

9.2. In the event that an owner or operator of such process equipment fails to submit a program or an acceptable program and schedule, the Director shall, by order, determine the compliance program and schedule.

§45-7-10. Variance.

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 ten (10) 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.

§45-7-11. Exemptions.

Provisions of this rule shall not apply to particulate emissions regulated by Series 2, 3, 5 and 6 or to internal combustion engines, aircraft, and air entrained particulate matter from public or private carriers.

TABLE 45-7A

Operating Source Operation or Total Source Operation Process Weight Rate in Pounds Per Hour[1]	Duplicate	Maximum Allowable Total Stack Emission Rate in Pounds Per Hour For the Appropriate Process Weight and Source Operation Type[1]		
	Type 'a'	Type 'b'	Type 'c'	Type 'd'[2]
0	0	0	0	0
2,500	3	3	9	0.2
5,000	5	5	13	0.8
10,000	10	10	19	1.8
20,000	16	16	26	4.0
30,000	22	22	32	6.2
40,000	28	28	36	8.3
50,000	31	31	40	10.5
100,000	33	33	54	1.2
200,000	37	37	70	21.2
300,000	40	40	80	21.2
400,000	43	46	88	21.2
500,000	47	53	94	21.2
600,000	50	62	99	21.2
700,000	50	71	99	21.2
800,000	50	79	99	21.2
900,000	50	88	99	21.2
1,800,000 and above	50	176	99	21.2

1. For a process weight between any two consecutive process weights stated in this table, the emission limitation shall be determined by linear interpolation.

2. Type 'd' source operation stack emission rates do not apply to MINERAL ACIDS. See subsection 4.2.

TABLE 45-7B

Mineral Acid	Allowable Stack Gas Concentration in Milligrams Per Dry Cubic Meter at Standard Conditions from Source Operations or Duplicate source Operations in Existence on the Effective Date of this Rule	Allowable Stack Gas Concentration in Milligrams per Dry Cubic Meter at Standard Conditions from Source Operations or Duplicate Source Operations Installed After the Effective Date of this Rule
Sulfuric Acid Mist	70	35
Nitric Acid Mist and/or Vapor	140	70
Hydrochloric Acid Mist and/or Vapor	420	210
Phosphoric Acid Mist and/or Vapor	6	3

TABLE 45-7B

Mineral Acid	Allowable Stack Gas Concentration in Milligrams Per Dry Cubic Meter at Standard Conditions from Source Operations or Duplicate source Operations in Existence on ~~the Effective Date of this Rule~~ July 1, 1970	Allowable Stack Gas Concentration in Milligrams per Dry Cubic Meter at Standard Conditions from Source Operations or Duplicate Source Operations Installed After ~~the Effective Date of this Rule~~ July 1, 1970
Sulfuric Acid Mist	70	35
Nitric Acid Mist and/or Vapor	140	70
Hydrochloric Acid Mist and/or Vapor	420	210
Phosphoric Acid Mist and/or Vapor	6	3

DATE:

TO: LEGISLATIVE RULEMAKING REVIEW COMMITTEE

FROM: John H. Johnston, Chief, Office of Air Quality

EMERGENCY RULE TITLE: "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"

1. Date of Filing June 27, 1997

2. Statutory authority for promulgating emergency rule:

W. Va. Code §§22-5-1 et seq. and §29A-3-15.

3. Date of filing of proposed legislative rule: June 27, 1997

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

The emergency rule amends a current legislative rule by adding specific performance standards for a specific manufacturing process.

5. Has the same or similar emergency rule previously been filed and expired?

No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

Please see attached document entitled "Statement of Basis for Emergency Rulemaking."

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

In order to utilize the specific authorization provided by the Legislature in House Bill 2333, the emergency rule should be filed no later than July 1, 1997.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Please see attached document entitled "Statement of Basis for Emergency Rulemaking."

Statement of Basis for Emergency Rulemaking

The current version of 45 CSR 7 - "*To Prevent and Control Particulate Air Pollution from Manufacturing Process Operations*", establishes a program of regulation to prevent and control particulate air pollution from manufacturing process operations. Regulation 7 establishes particulate emission standards for a wide variety of manufacturing process operations. The regulation affects small process operations such as a single spray painting booth to large process operations associated with steel production such as coke oven batteries. The revisions to this regulation are being sought on a permanent basis and pursuant to the State Administrative Procedures Act, §29A-3-15, which enables state agencies to promulgate emergency rules. This emergency rule will establish specific emission performance standards for Johns Manville International, Inc.'s (JM) unique flame attenuation fiberglass manufacturing operations and will create source-specific performance standards appropriate to control the emission of particulate matter from individual stacks venting the fiber-forming collection chambers of duplicate flame attenuation (pot and marble) fiberglass operations that were in existence prior to June 1, 1993. The emergency rule is promulgated pursuant to: a) specific legislative authorization provided in H.B. 2333; b) the terms of a related administrative Consent Order; and c) is concurrent with the Office of Air Quality's review of a petition for regulatory change by JM (formerly Schuller International, Inc.) and would affect only that company's existing fiberglass production facility located at Vienna, West Virginia, in Wood County.

JM's Parkersburg facility produces a variety of fiberglass products for the automotive, air filtration, and aircraft industries. There are nine production lines at the facility. All use the unique flame attenuation process as opposed to the more common, and higher capacity, rotary spin process.

Of the nine production lines, six produce various media for either air or liquid filtration. The products are also unique due to the fine fiber diameter and the reduced thickness of the finished product. The remaining three units produce various cured and uncured material for the automotive industry.

The sources of the atmospheric pollutants affected by this change are the exhaust from the various collection chambers used to form the mat. JM has previously concluded and demonstrated to the OAQ that Regulation 7 is neither appropriate nor feasible for the Parkersburg facility's unique, high airflow, low concentration, and low input weight PM emissions sources. Emissions of particulate matter from individual stacks venting the collection chambers at the facility cannot meet the duplicate source provisions of Regulation 7 based on stack test data submitted in the late 1980's and other subsequent information supplied by JM. JM has pursued research and development, abatement equipment, techniques and methodologies, and employed those which are both economically achievable and technically feasible to reduce particulate matter emissions for these sources in its efforts to comply with the duplicate source emission limits and, barring full compliance, to reduce emissions to the maximum extent practicable. JM completed a top-down best available technology study for particulate matter emissions which shows that the annualized cost of various type of abatement systems (scrubber, scrubber/wt ESP combination, incinerator, etc.) varies from approximately $67,000 to almost $142,000 per ton of pollutants avoided. This compares to stringent guidelines of the South Coast Air Quality Management District in California which considers an annualized cost of $5,700 per ton to be the maximum reasonable cost to abate particulate matter. No traditional control measure is economically or technically feasible at the Parkersburg facility.

The reason for this infeasibility is the duplicate source provisions in Regulation 7. Under the duplicate source provisions of Regulation 7, allowable emissions are calculated based upon the combined process input weight for all sources. The allowable emission rate for each individual source is then established using the ratio of process input weight for the individual source to the total process input weight, times the allowable emission rate for the combined sources. Since the relationship between the allowable emission rate and the process input rate is less than linear, the duplicate source provisions further restrict the emissions limits where there are multiple similar sources at a plant.

In lieu of the current Regulation 7 duplicate source emission limits for flame attenuation fiberglass processes, JM performed an analysis and justification for "process-specific" emission limits. JM proposed emission limits using the best actual emission rate to date plus a 25% variability factor. This would result in emission limits which are technically achievable, enforceable, consistent with requirements in other states, and contains trading provisions suitable for the production flexibility required. There will not be an increase in emissions over present overall levels emitted.

The process-specific emission limitations are now a part of a Consent Order which was negotiated between JM and the OAQ (dated March 6, 1995). This Order also specified that an air quality modeling study, encompassing a region affected by JM emissions, would be performed to demonstrate that these revised emission limits will comply with the PM_{10} National Ambient Air Quality Standards (NAAQS). The OAQ has reviewed this modeling analysis and concludes that the analysis follows appropriate modeling guidance and policies. The modeling analysis also demonstrates that the revised emission limits incorporated in proposed Regulation 7 do not violate the PM_{10} NAAQS.

BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

JOHN E. CAFFREY
COMMISSIONER

June 25, 1997

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

RE: 45CSR7 - "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing of the above-referenced rule as an emergency rule pursuant to authorization HB 2333.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers at 759-0515.

Sincerely yours,

John E. Caffrey
Commissioner

JEC:cc

Attachment

As part of the consent order, JM agreed to continue its efforts to amend Regulation 7 to establish specific performance standards for the flame attenuation fiberglass process. Accordingly, JM petitioned the Office of Air Quality in 1996 to revise Regulation 7. The timely adoption of these revisions are necessary since the terms of the consent order expire on July 1, 1998. A public hearing for the proposed revisions was held on March 27, 1997. EPA, Region III filed comments on the proposed revisions, and a variety of technical issues regarding the revisions were raised by Region III's comments, all of which have been resolved or are the subject of an on-going collaborative effort among the Office of Air Quality, Region III and JM. Due to time constraints of the 1997 legislative session, the proposed revisions were not yet permanently incorporated into Regulation 7. However, cognizant of the need to revise Regulation 7 to incorporate specific performance standards near term, the Legislature, in H.B. 2333, authorized the Director of the Division of Environmental Protection to propose for promulgation an emergency rule to so amend Regulation 7. This emergency rule is being filed pursuant to that express legislative authorization. The primary objective of this emergency rule is to comply with the terms of the aforementioned Consent Order and to adopt appropriate specific performance standards. The formerly proposed revised rule will proceed through normal review and will be filed with the Legislature for approval. For the reasons stated above, this emergency rulemaking is being undertaken in order to comply with the time limitations in the underlying State Consent Order and to preserve the public interest as reflected by the provisions of H.B. 2333 authorizing the promulgation of an emergency amendment to Regulation 7.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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(Plus all the volunteer help we can get)

August 5, 1997

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Environmental Protection, Office of Air Quality

RULE: Series 7, Amendments, To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations

DATE FILED AS AN EMERGENCY RULE: June 27, 1997

DECISION NO. 6-97

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

Ken Hechler

KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
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EMERGENCY RULE DECISION
(ERD 6-97)

AGENCY: Division of Environmental Protection, Office of Air Quality
RULE: Series 7, Amendments, To Prevent and Control Particulate Air Pollution From Manufacturing process Operations
FILED AS AN EMERGENCY RULE: June 27, 1997

par. 1 The Division of Environmental Protection, Office of Air Quality (OAQ) has filed the above amendments to an existing rule as an emergency rule.

par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.

par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a].

par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The OAQ filed this emergency rule with supporting documents with the Secretary of State June 27, 1997 and with the LRMRC June 27, 1997.

par. 7 It is the determination of the Secretary of State that the OAQ has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §22-5-4(a)(4) reads in part:

To promulgate legislative rules in accordance with the provisions of §29A-1-1 et seq. of this code not inconsistent with the provisions of this article, relating to the control of air pollution.

par. 9 It is the determination of the Secretary of State that the OAQ has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the OAQ are as follows in part:

The current version of 45CSR7 "To Prevent & Control Particulate Air Pollution from Manufacturing process Operations," establishes a program of regulation to prevent and control particulate air pollution from manufacturing process operations. Regulation 7 establishes particulate emission standards for a wide variety of manufacturing process operations. The regulation affects small process operations such as a single spray painting booth to large process operations associated with steel production such as coke oven batteries. The revisions to this regulation are being sought on a permanent basis and pursuant to the §29A-3-15, which enables state agencies to promulgate emergency rules. This emergency rule will establish specific emission performance standards for Johns Manville International, Inc.'s (JM) unique flame attenuation fiberglass manufacturing operations and will create source-specific performance standards appropriate to control the emission of particulate matter from individual stacks venting the fiber-forming collection chambers of duplicate flame attenuation (pot and marble) fiberglass operations that were in existence prior to June 1, 1993. The emergency rule is promulgated pursuant to: a) specific legislative authorization provided in HB 2333; b) the terms of a related administrative Consent Order; and c) is concurrent with the Office of Air Quality's review of a petition for regulatory change by JM (formerly Schuller

International, Inc.) and would affect only that company's existing fiberglass production facility located at Vienna, WV in Wood County....
As part of the consent order, JM agreed to continue its efforts to amend Regulation 7 to establish specific performance standards for the flame attenuation fiberglass process. Accordingly, JM petitioned OAQ in 1996 to revise Series 7. The timely adoption of these revisions are necessary since the terms of the consent order expire on July 1, 1998. A public hearing for the proposed revisions was held on March 27, 1997. EPA, Region III filed comments on the proposed revisions, and a variety of technical issues regarding the revisions were raised by Region III's comments, all of which have been resolved or are the subject of an on-going collaborative effort among the OAQ, Region III and JM. Due to time constraints of the 1997 legislative session, the proposed revisions were not permanently incorporated into Series 7. However, cognizant of the need to revise Series 7 to incorporate specific performance standards near term, the Legislature, in HB 2333, authorized the Director of Environmental Protection to propose for promulgation an emergency to so amend Series 7. This emergency rule is being filed pursuant to that express legislative authorization. The primary objective of this emergency rule is to comply with the terms of the aforementioned Consent Order and to adopt appropriate specific performance standards. The formerly proposed revised rule will proceed through normal review and will be filed with the Legislature for approval. For the reasons stated above, this emergency rulemaking is being undertaken in order to comply with the time limitations in the underlying State consent Order and to preserve the public interest as reflected by the provisions of HB 2333 authorizing the promulgation of an emergency amendment to Series 7.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "mandated by the Legislature."

par. 14 This decision shall be cited as Emergency Rule Decision 6-97 or ERD 6-97 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Environmental Protection, Office of Air Quality, the Attorney General and the Legislative Rule Making Review Commission.

Ken Hechler

KEN HECHLER
Secretary of State

FILED
AUG 5 2 56 PM '97
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

Entered_____