

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #6

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MAY 1 3 34 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.

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

AMENDMENT TO AN EXISTING RULE: YES , 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: _____

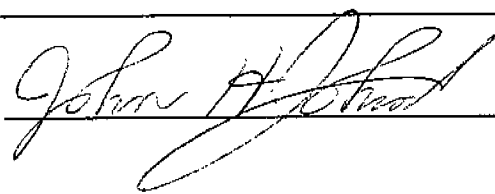
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) H. B. 4136

SECTION W. Va. Code §64-3-1 , PASSED ON March 14, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 1, 1998



\$4.80



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

CECIL H. UNDERWOOD
GOVERNOR

May 1, 1998

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 that I am giving approval to file the above-referenced rule with your office as a final rule authorized by HB 4136, signed by Governor Underwood April 2, 1998.

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,


Michael P. Miano
Assistant Director

JEC:cc

Attachment

cc: Karen Watson, OAQ

**LEGISLATIVE HISTORY ABSTRACT
45CSR7**

**TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION
FROM MANUFACTURING PROCESS OPERATIONS**

Bureau of Environment
Division of Environmental Protection
Office of Air Quality
House Bill 4136 Section 64-3-1

06/30/97 Filed Notice of Public Hearing with Secretary of State.

06/30/97 Initial Filing with Legislative Rule-Making Review Committee.

08/04/97 Held Public Hearing.

08/06/97 End of Public Comment Period.

08/14/97 Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.

01/12/98 Rule Approved by Legislative Rule-Making Review Committee.

03/14/98 Passed the West Virginia Legislature.

04/02/98 Approved by the Governor.

05/01/98 Rule Final Filed with Secretary of State.

05/01/98 Effective Date of Rule.

FILED

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

May 1 3 34 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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. -- May 1, 1998

1.4. Effective Date. -- May 1, 1998

§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 Duplicate Maximum Allowable Total Stack Emission Rate
 Source Operation Process Weight Rate in in Pounds Per Hour For the Appropriate Process
 Pounds Per Hour¹ Weight and Source Operation Type¹

	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 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 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

9817

H. B. 4136

45-7

1 Bill-DEP, P

(By Delegates Hunt, Linch, Compton, Jenkins,

2

Faircloth and Riggs)

3

[Introduced January 30, 1998; referred to the

4

Committee on the Judiciary.]

5

6

7

8

9

10 A BILL to amend and reenact section one, article three,
 11 chapter sixty-four of the code of West Virginia, one
 12 thousand nine hundred thirty-one, as amended, relating
 13 to authorizing the division of environmental
 14 protection to promulgate a legislative rule relating
 15 to the prevention and control of particulate air
 16 pollution from manufacturing process operations.

17 *Be it enacted by the Legislature of West Virginia:*

18 That section one, article three, chapter sixty-four of
 19 the code of West Virginia, one thousand nine hundred
 20 thirty-one, as amended, be amended and reenacted, to read
 21 as follows:

22 **ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO**
 23 **PROMULGATE LEGISLATIVE RULES.**

4126

1 §64-3-1. Division of environmental protection.

2 (a) The legislative rule filed in the state register
3 on the thirtieth day of August, one thousand nine hundred
4 ninety-six, authorized under the authority of section six,
5 article eighteen, chapter twenty-two of this code, relating
6 to the division of environmental protection (hazardous
7 waste management, 33 CSR 20), is authorized.

8 (b) The legislative rule filed in the state register
9 on the twenty-ninth day of August, one thousand nine
10 hundred ninety-six, authorized under the authority of
11 section four, article five, chapter twenty-two of this
12 code, relating to the division of environmental protection
13 (standards of performance for new stationary sources
14 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

15 (c) The legislative rule filed in the state register
16 on the twenty-ninth day of August, one thousand nine
17 hundred ninety-six, authorized under the authority of
18 section four, article five, chapter twenty-two of this
19 code, relating to the division of environmental protection
20 (emission standards for hazardous air pollutants pursuant
21 to 40 CFR Part 63, 45 CSR 34), is authorized.

22 (d) The legislative rule filed in the state register
23 on the twenty-eighth day of August, one thousand nine

1 hundred ninety-six, authorized under the authority of
2 section six, article seventeen, chapter twenty-two of this
3 code, modified by the division of environmental protection
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 twenty-second day of October, one thousand nine hundred
7 ninety-six, relating to the division of environmental
8 protection (underground storage tank insurance trust fund,
9 33 CSR 32), is authorized.

10 (e) The legislative rule filed in the state register
11 on the twenty-ninth day of August, one thousand nine
12 hundred ninety-six, authorized under the authority of
13 section three, article one, chapter twenty-two of this
14 code, modified by the division of environmental protection
15 to meet the objections of the legislative rule-making
16 review committee and refiled in the state register on the
17 twentieth day of December, one thousand nine hundred
18 ninety-six, relating to the division of environmental
19 protection (WV/NPDES regulations for coal mining
20 facilities, 47 CSR 30), is authorized.

21 (f) The legislative rule filed in the state register
22 on the thirtieth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section four,

1 article three, chapter twenty-two of this code, modified by
2 the division of environmental protection to meet the
3 objections of the legislative rule-making review committee
4 and refiled in the state register on the twenty-first day
5 of February, one thousand nine hundred ninety-seven,
6 relating to the division of environmental protection
7 (surface mining and reclamation regulations, 38 CSR 2), is
8 authorized, with the following amendments:

9 "On page three, subsection 2.4, by striking out the
10 words "Coal seams commonly associated with such minerals
11 may include, but are not limited to Waynesburg, Washington,
12 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk
13 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
14 Stockton Lewiston";

15 On page three, subsection 2.4, line eight, by striking
16 out the words "these seams are", and inserting in lieu
17 thereof the words "the seam is";

18 On page nine, subsection 2.43, line two, after the
19 word "highwall", by inserting the words "except in
20 operations where the entire upper horizon above the lowest
21 coal seam is proposed to be partly or entirely removed";

22 On page sixteen, subsection 2.95, line seven after
23 the "any", by inserting the word "substantial";

1 On page eighteen, subsection 2.108, line two, after
2 the word "stream." by adding the following: Examples
3 include wildlife ponds, settling basins and all ponds and
4 facilities or structures used for water treatment.;

5 On page nineteen, subsection 2.120, line three, by
6 striking the word "or" and inserting in lieu thereof the
7 word "and";

8 On page twenty-nine, subsection 3.2.e., after the word
9 "period" by striking the remainder of the subdivision
10 3.2.e.;

11 On page forty-nine, subsection 3.14.b.7., by striking
12 the entire paragraph;

13 On page forty-nine, subsection 3.14.b.8., by striking
14 the entire paragraph;

15 On page forty-nine, by renumbering the remaining
16 paragraphs;

17 On page fifty-one, subparagraph 3.14.b.14E, line one,
18 before the word "A", by inserting the words "If requested
19 by the Director";

20 On page fifty-one, subsection 3.14.b.15.B., by
21 striking the entire subparagraph, and inserting in lieu
22 thereof the following: 3.14.b.15.B. Surface water must be
23 diverted around or over the material by properly designed

1 and stabilized diversion channels which have been designed
2 using the best current technology to provide protection to
3 the environment or the health, welfare and safety of the
4 public. The channel shall be designed and constructed to
5 ensure stability of the remaining material, control
6 erosion, and minimize water infiltration into the remaining
7 material.;

8 On page seventy-two, subdivision 3.29.a, line five
9 after the word "IBR", by inserting the words "or where it
10 has been demonstrated to the satisfaction of the Director
11 that limited coal removal on areas immediately adjacent to
12 the existing permit is the only practical alternative to
13 recovery of unanticipated reserves or necessary to enhance
14 reclamation efforts or environmental protection";

15 On page eighty-six, by inserting a new subsection 3.35
16 to read as follows: 3.35. All grade measurements and
17 linear measurements in this rule shall be subject to a
18 tolerance of two percent (2%). All angles in this rule
19 shall be measured from the horizontal and shall be subject
20 to a tolerance of five percent (5%): *Provided, however,*
21 this allowable deviation from the approved plan does not
22 affect storage capacity and/or performance standards.

23 On page one hundred eight, subdivision 5.5.c., line

1 two, after the word "landowner", by striking the remainder
2 of the paragraph and inserting in lieu thereof the words
3 "requesting the permanent structures be left for
4 recreational or wildlife propagation purposes or for any
5 beneficial uses to the landowner";

6 On page one hundred twelve, subdivision 6.5.a., line
7 five, after the word "Sunday." by adding the following:
8 *Provided, however,* the Director may grant approval of a
9 request for Sunday blasting if the operator demonstrates to
10 the satisfaction of the Director that the blasting is
11 necessary and there has been an opportunity for a public
12 hearing.;

13 On page one hundred twenty-six, paragraph 9.2.i.2,
14 after the word "achieved" by inserting: An alternate
15 maximum or minimum soil pH may be approved based on the
16 optimum pH for the revegetation species.;

17 On page one hundred thirty, line one, paragraph
18 9.3.h.1., by striking out the paragraph in its entirety,
19 and inserting in lieu thereof: 9.3.h.1. The minimum
20 stocking rate of commercial tree species shall be in
21 accordance with the approved forest management plan
22 prepared by a registered professional forester. In no case
23 may the rate be less than four hundred fifty (450) stems

1 per acre of commercial tree species;

2 On page one hundred thirty, paragraph 9.3.h.2., by
3 striking out the paragraph in its entirety, and by
4 renumbering the subsequent paragraphs;

5 On page one hundred thirty, in renumbered paragraph
6 9.3.h.2., after the word "than", by striking out the words
7 "four hundred fifty (450)", and inserting in lieu thereof
8 "three hundred (300);" On page one hundred thirty, in
9 renumbered paragraph 9.3.h.2., after the word "acre", by
10 inserting the words "or the rate specified in the forest
11 management plan, whichever is greater,";

12 On page two hundred twenty-two, subdivision 14.11.e,
13 line 6, by striking out the word "operable" and by
14 inserting in lieu thereof "such condition that operations
15 could be resumed within sixty (60) days";

16 On page two hundred twenty-three, subdivision
17 14.11.f., line four, by striking out the word "operative",
18 and by inserting in lieu thereof the words "such condition
19 that the operations could be resumed within sixty (60)
20 days";

21 On page two hundred twenty-three, subdivision
22 14.11.f., line four, after the word "is", by inserting the
23 words "protected from unauthorized entry";

1 On page two hundred thirty-eight, subparagraph
2 14.15.b.6.A., line five, after the word "exceed", by
3 striking out the words "fifty (50) percent of the total
4 permit acreage, or four hundred (400) acres, whichever is
5 less, on operations which consist of at least three spreads
6 of equipment", and inserting in lieu thereof the words
7 "five hundred (500) acres on operations which consist of
8 multiple spreads of equipment";

9 On page two hundred thirty-nine, subsection 14.15.c.,
10 line three, after the word "regraded", by inserting the
11 words "and stabilized";

12 On page two hundred thirty-nine, subsection 14.15.c.,
13 line four, after the word "plan", by striking out the
14 "comma" and the remainder of the subparagraph, and
15 inserting in lieu thereof the words: The following shall
16 not be included in the calculation of disturbed area.;

17 On page two hundred forty, paragraph 14.15.c.2., line
18 seven, after the word "benches", by inserting the words
19 "without regard to like thickness";

20 On page two hundred forty, paragraph 14.15.c.5, line
21 two, after the word "graded", by inserting the words "with
22 material placed in a stable, controlled manner which will
23 not subsequently be moved".

1 (g) The legislative rule filed in the state register
2 on the twenty-ninth day of August, one thousand nine
3 hundred ninety-six, authorized under the authority of
4 section ten, article five, chapter twenty-two of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 sixth day of November, one thousand nine hundred
9 ninety-six, relating to the division of environmental
10 protection (confidential information, 45 CSR 31), is
11 authorized.

12 (h) The legislative rule filed in the state register
13 on the twenty-ninth day of August, one thousand nine
14 hundred ninety-six, authorized under the authority of
15 section four, article five, chapter twenty-two of this
16 code, modified by the division of environmental protection
17 to meet the objections of the legislative rule-making
18 review committee and refiled in the state register on the
19 sixteenth day of January, one thousand nine hundred
20 ninety-seven, relating to the division of environmental
21 protection (to prevent and control air pollution from
22 hazardous waste treatment, storage or disposal facilities,
23 45 CSR 25), is authorized.

1 (i) The legislative rule filed in the state register
2 on the fifth day of February, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 three, article twenty-two, chapter twenty-two of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 fifth day of February, one thousand nine hundred
9 ninety-seven, relating to the division of environmental
10 protection (voluntary remediation and redevelopment, 60 CSR
11 3), is authorized.

12 (j) That title sixty, series one of the code of state
13 rules be amended by deleting the current interpretative
14 rule for the office of environmental advocate and inserting
15 in lieu thereof the following legislative rule, to read as
16 follows:

17 "§61-10-1. General.

18 1.1. Scope. - This legislative rule governs and
19 controls the appointment and qualifications of the position
20 of Environmental Advocate within the Division of
21 Environmental Protection.

22 1.2. Authority - West Virginia Code §22-1-3, 22-1-3a,
23 22-20.

1 1.3. Filing Date -

2 1.4. Effective Date - July 1, 1997.

3 §61-10-2. Appointment, Salary and Qualifications.

4 2.1. Appointment. - The position of Environmental
5 Advocate will be a full-time position, will be appointed by
6 the Director, and will serve at the will and pleasure of
7 the Director of the Division of Environmental Protection in
8 accordance with the West Virginia Code §22-23-1.

9 2.2. Salary. - The salary of the position of
10 Environmental Advocate will be set by the Director and is
11 subject to future adjustments at the discretion of the
12 Director.

13 2.3. Qualifications. - The Director will receive or
14 solicit applications for the position of Environmental
15 Advocate from persons having the following minimum
16 qualifications:

17 2.3.a. A citizen and resident of the State of West
18 Virginia.

19 2.3.b. A graduate from an accredited college or
20 university with a four-year degree in a field of study
21 directly related to the qualifications, powers, and duties
22 of the position as set forth by the director.

1 2.3.c. A minimum of two years full-time or cumulative
2 experience in work directly related to environmental
3 protection, or other public service work or experience
4 which demonstrates the ability to carry out the powers and
5 duties of the position as set forth by the director.

6 2.3.d. A working familiarity with some of the legal
7 requirements and programmatic functions of the Division of
8 Environmental Protection.

9 2.3.e. A demonstrated ability to skillfully verbally
10 and by writing communicate in a public forum.

11 2.3.f. A demonstrated ability to use word processing
12 software for a computer and other necessary computer
13 skills as determined by the director.

14 2.3.g. A valid West Virginia driver's license.

15 §61-10-3. Powers and Limitations -

16 The Environmental Advocate will carry out the duties
17 of the position as set forth in this rule, and as
18 prescribed by the Director in accordance with the
19 following:

20 3.1. The Environmental Advocate will be guided in all
21 actions by the policy statement and the nine purposes set
22 forth in West Virginia Code §22-1-1 (b).

23 3.2. The Environmental Advocate may not in any

1 official capacity represent any person in, or in
2 behalf of any person, legal or quasi-legal actions, either
3 in support of or opposed to the Division of Environmental
4 Protection without the expressed approval of the Director,
5 and under supervision of the Division of Environmental
6 Protection's General Counsel.

7 §.3. The Environmental Advocate may not in any
8 official capacity organize public campaigns in support of,
9 or in opposition to official positions taken by the
10 Division of Environmental Protection on environmental
11 matters, and will not in any official capacity actively
12 participate in any such organized campaign."

13 (K) ~~The director of the division of environmental~~
14 ~~protection is hereby authorized to propose for promulgation~~
15 ~~an emergency rule to amend a current legislative rule~~
16 ~~relating to monitoring of air quality legislative rule~~
17 ~~filed in the state register on the fourteenth day of~~
18 ~~August, one thousand nine hundred ninety-seven, authorized~~
19 ~~under the authority of section four, article five, chapter~~
20 ~~twenty-two, of this code, relating to the division of~~
21 ~~environmental protection, to prevent and control particulate~~
22 ~~air pollution from manufacturing process operations, is hereby~~
23 ~~7) authorized.~~

1 (1) The legislative rule filed in the state register
2 on the eighteenth day of March, one thousand nine hundred
3 ninety-seven, relating to the division of environmental
4 protection (yard waste composting, 47 CSR 38E) is
5 authorized.

6
7 NOTE: The purpose of this bill is to authorize the
8 Division of Environmental Protection to promulgate a
9 legislative rule relating to the Prevention and Control of
10 Particulate Air Pollution From Manufacturing Process
11 Operations.

12
13 Strike-throughs indicate language that would be
14 stricken from the present law, and underscoring indicates
15 new language that would be added.



45-7

Senate Bill No. 291

(By Senator(s) Ross, Anderson, Bowman,
Macnaughtan, Boley and Buckalew)

[Introduced January 30, 1998; referred to the
Committee on Energy, Industry and Mining; and
then to the Committee on the Judiciary.]

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate a legislative rule relating
15 to the prevention and control of particulate air
16 pollution from manufacturing process operations.

17 *Be it enacted by the Legislature of West Virginia:*

18 That section one, article three, chapter sixty-four of
19 the code of West Virginia, one thousand nine hundred
20 thirty-one, as amended, be amended and reenacted, to read
21 as follows:

22 **ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO**
23 **PROMULGATE LEGISLATIVE RULES.**

1 §64-3-1. Division of environmental protection.

2 (a) The legislative rule filed in the state register
3 on the thirtieth day of August, one thousand nine hundred
4 ninety-six, authorized under the authority of section six,
5 article eighteen, chapter twenty-two of this code, relating
6 to the division of environmental protection (hazardous
7 waste management, 33 CSR 20), is authorized.

8 (b) The legislative rule filed in the state register
9 on the twenty-ninth day of August, one thousand nine
10 hundred ninety-six, authorized under the authority of
11 section four, article five, chapter twenty-two of this
12 code, relating to the division of environmental protection
13 (standards of performance for new stationary sources
14 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

15 (c) The legislative rule filed in the state register
16 on the twenty-ninth day of August, one thousand nine
17 hundred ninety-six, authorized under the authority of
18 section four, article five, chapter twenty-two of this
19 code, relating to the division of environmental protection
20 (emission standards for hazardous air pollutants pursuant
21 to 40 CFR Part 63, 45 CSR 34), is authorized.

22 (d) The legislative rule filed in the state register
23 on the twenty-eighth day of August, one thousand nine

1 hundred ninety-six, authorized under the authority of
2 section six, article seventeen, chapter twenty-two of this
3 code, modified by the division of environmental protection
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 twenty-second day of October, one thousand nine hundred
7 ninety-six, relating to the division of environmental
8 protection (underground storage tank insurance trust fund,
9 33 CSR 32), is authorized.

10 (e) The legislative rule filed in the state register
11 on the twenty-ninth day of August, one thousand nine
12 hundred ninety-six, authorized under the authority of
13 section three, article one, chapter twenty-two of this
14 code, modified by the division of environmental protection
15 to meet the objections of the legislative rule-making
16 review committee and refiled in the state register on the
17 twentieth day of December, one thousand nine hundred
18 ninety-six, relating to the division of environmental
19 protection (WV/NPDES regulations for coal mining
20 facilities, 47 CSR 30), is authorized.

21 (f) The legislative rule filed in the state register
22 on the thirtieth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section four,

1 article three, chapter twenty-two of this code, modified by
2 the division of environmental protection to meet the
3 objections of the legislative rule-making review committee
4 and refiled in the state register on the twenty-first day
5 of February, one thousand nine hundred ninety-seven,
6 relating to the division of environmental protection
7 (surface mining and reclamation regulations, 38 CSR 2), is
8 authorized, with the following amendments:

9 "On page three, subsection 2.4, by striking out the
10 words "Coal seams commonly associated with such minerals
11 may include, but are not limited to Waynesburg, Washington,
12 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk
13 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
14 Stockton Lewiston";

15 On page three, subsection 2.4, line eight, by striking
16 out the words "these seams are", and inserting in lieu
17 thereof the words "the seam is";

18 On page nine, subsection 2.43, line two, after the
19 word "highwall", by inserting the words "except in
20 operations where the entire upper horizon above the lowest
21 coal seam is proposed to be partly or entirely removed";

22 On page sixteen, subsection 2.95, line seven after
23 the "any", by inserting the word "substantial";

1 On page eighteen, subsection 2.108, line two, after
2 the word "stream." by adding the following: Examples
3 include wildlife ponds, settling basins and all ponds and
4 facilities or structures used for water treatment.;

5 On page nineteen, subsection 2.120, line three, by
6 striking the word "or" and inserting in lieu thereof the
7 word "and";

8 On page twenty-nine, subsection 3.2.e., after the word
9 "period" by striking the remainder of the subdivision
10 3.2.e.;

11 On page forty-nine, subsection 3.14.b.7., by striking
12 the entire paragraph;

13 On page forty-nine, subsection 3.14.b.8., by striking
14 the entire paragraph;

15 On page forty-nine, by renumbering the remaining
16 paragraphs;

17 On page fifty-one, subparagraph 3.14.b.14E, line one,
18 before the word "A", by inserting the words "If requested
19 by the Director";

20 On page fifty-one, subsection 3.14.b.15.B., by
21 striking the entire subparagraph, and inserting in lieu
22 thereof the following: 3.14.b.15.B. Surface water must be
23 diverted around or over the material by properly designed

1 and stabilized diversion channels which have been designed
2 using the best current technology to provide protection to
3 the environment or the health, welfare and safety of the
4 public. The channel shall be designed and constructed to
5 ensure stability of the remaining material, control
6 erosion, and minimize water infiltration into the remaining
7 material.;

8 On page seventy-two, subdivision 3.29.a, line five
9 after the word "IBR", by inserting the words "or where it
10 has been demonstrated to the satisfaction of the Director
11 that limited coal removal on areas immediately adjacent to
12 the existing permit is the only practical alternative to
13 recovery of unanticipated reserves or necessary to enhance
14 reclamation efforts or environmental protection";

15 On page eighty-six, by inserting a new subsection 3.35
16 to read as follows: 3.35. All grade measurements and
17 linear measurements in this rule shall be subject to a
18 tolerance of two percent (2%). All angles in this rule
19 shall be measured from the horizontal and shall be subject
20 to a tolerance of five percent (5%): *Provided, however,*
21 *this allowable deviation from the approved plan does not*
22 *affect storage capacity and/or performance standards.*

23 On page one hundred eight, subdivision 5.5.c., line

1 two, after the word "landowner", by striking the remainder
2 of the paragraph and inserting in lieu thereof the words
3 "requesting the permanent structures be left for
4 recreational or wildlife propagation purposes or for any
5 beneficial uses to the landowner";

6 On page one hundred twelve, subdivision 6.5.a., line
7 five, after the word "Sunday." by adding the following:
8 *Provided, however,* the Director may grant approval of a
9 request for Sunday blasting if the operator demonstrates to
10 the satisfaction of the Director that the blasting is
11 necessary and there has been an opportunity for a public
12 hearing.;

13 On page one hundred twenty-six, paragraph 9.2.i.2,
14 after the word "achieved" by inserting: An alternate
15 maximum or minimum soil pH may be approved based on the
16 optimum pH for the revegetation species.;

17 On page one hundred thirty, line one, paragraph
18 9.3.h.1., by striking out the paragraph in its entirety,
19 and inserting in lieu thereof: 9.3.h.1. The minimum
20 stocking rate of commercial tree species shall be in
21 accordance with the approved forest management plan
22 prepared by a registered professional forester. In no case
23 may the rate be less than four hundred fifty (450) stems

1 per acre of commercial tree species;

2 On page one hundred thirty, paragraph 9.3.h.2., by
3 striking out the paragraph in its entirety, and by
4 renumbering the subsequent paragraphs;

5 On page one hundred thirty, in renumbered paragraph
6 9.3.h.2., after the word "than", by striking out the words
7 "four hundred fifty (450)", and inserting in lieu thereof
8 "three hundred (300);" On page one hundred thirty, in
9 renumbered paragraph 9.3.h.2., after the word "acre", by
10 inserting the words "or the rate specified in the forest
11 management plan, whichever is greater,";

12 On page two hundred twenty-two, subdivision 14.11.e,
13 line 6, by striking out the word "operable" and by
14 inserting in lieu thereof "such condition that operations
15 could be resumed within sixty (60) days";

16 On page two hundred twenty-three, subdivision
17 14.11.f., line four, by striking out the word "operative",
18 and by inserting in lieu thereof the words "such condition
19 that the operations could be resumed within sixty (60)
20 days";

21 On page two hundred twenty-three, subdivision
22 14.11.f., line four, after the word "is", by inserting the
23 words "protected from unauthorized entry";

1 On page two hundred thirty-eight, subparagraph
2 14.15.b.6.A., line five, after the word "exceed", by
3 striking out the words "fifty (50) percent of the total
4 permit acreage, or four hundred (400) acres, whichever is
5 less, on operations which consist of at least three spreads
6 of equipment", and inserting in lieu thereof the words
7 "five hundred (500) acres on operations which consist of
8 multiple spreads of equipment";

9 On page two hundred thirty-nine, subsection 14.15.c.,
10 line three, after the word "regraded", by inserting the
11 words "and stabilized";

12 On page two hundred thirty-nine, subsection 14.15.c.,
13 line four, after the word "plan", by striking out the
14 "comma" and the remainder of the subparagraph, and
15 inserting in lieu thereof the words: The following shall
16 not be included in the calculation of disturbed area.;

17 On page two hundred forty, paragraph 14.15.c.2., line
18 seven, after the word "benches", by inserting the words
19 "without regard to like thickness";

20 On page two hundred forty, paragraph 14.15.c.5, line
21 two, after the word "graded", by inserting the words "with
22 material placed in a stable, controlled manner which will
23 not subsequently be moved".

1 (g) The legislative rule filed in the state register
2 on the twenty-ninth day of August, one thousand nine
3 hundred ninety-six, authorized under the authority of
4 section ten, article five, chapter twenty-two of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 sixth day of November, one thousand nine hundred
9 ninety-six, relating to the division of environmental
10 protection (confidential information, 45 CSR 31), is
11 authorized.

12 (h) The legislative rule filed in the state register
13 on the twenty-ninth day of August, one thousand nine
14 hundred ninety-six, authorized under the authority of
15 section four, article five, chapter twenty-two of this
16 code, modified by the division of environmental protection
17 to meet the objections of the legislative rule-making
18 review committee and refiled in the state register on the
19 sixteenth day of January, one thousand nine hundred
20 ninety-seven, relating to the division of environmental
21 protection (to prevent and control air pollution from
22 hazardous waste treatment, storage or disposal facilities,
23 45 CSR 25), is authorized.

1 (i) The legislative rule filed in the state register
2 on the fifth day of February, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 three, article twenty-two, chapter twenty-two of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 fifth day of February one thousand nine hundred
9 ninety-seven, relating to the division of environmental
10 protection (voluntary remediation and redevelopment, 60 CSR
11 3), is authorized.

12 (j) That title sixty, series one of the code of state
13 rules be amended by deleting the current interpretative
14 rule for the office of environmental advocate and inserting
15 in lieu thereof the following legislative rule, to read as
16 follows:

17 **"§61-10-1. General.**

18 **1.1. Scope.** - This legislative rule governs and
19 controls the appointment and qualifications of the position
20 of Environmental Advocate within the Division of
21 Environmental Protection.

22 **1.2. Authority** - West Virginia Code §22-1-3, 22-1-3a,
23 22-20.

1 1.3. Filing Date -

2 1.4. Effective Date - July 1, 1997.

3 §61-10-2. Appointment, Salary and Qualifications.

4 2.1. Appointment. - The position of Environmental
5 Advocate will be a full-time position, will be appointed by
6 the Director, and will serve at the will and pleasure of
7 the Director of the Division of Environmental Protection in
8 accordance with the West Virginia Code §22-20-1.

9 2.2. Salary. - The salary of the position of
10 Environmental Advocate will be set by the Director and is
11 subject to future adjustments at the discretion of the
12 Director.

13 2.3. Qualifications. - The Director will receive or
14 solicit applications for the position of Environmental
15 Advocate from persons having the following minimum
16 qualifications:

17 2.3.a. A citizen and resident of the State of West
18 Virginia.

19 2.3.b. A graduate from an accredited college or
20 university with a four-year degree in a field of study
21 directly related to the qualifications, powers, and duties
22 of the position as set forth by the director.

1 2.3.c. A minimum of two years full-time or cumulative
2 experience in work directly related to environmental
3 protection, or other public service work or experience
4 which demonstrates the ability to carry out the powers and
5 duties of the position as set forth by the director.

6 2.3.d. A working familiarity with some of the legal
7 requirements and programmatic functions of the Division of
8 Environmental Protection.

9 2.3.e. A demonstrated ability to skillfully verbally
10 and by writing communicate in a public forum.

11 2.3.f. A demonstrated ability to use word processing
12 software for a computer and other necessary computer
13 skills as determined by the director.

14 2.3.g. A valid West Virginia driver's license.

15 **§61-10-3. Powers and Limitations -**

16 The Environmental Advocate will carry out the duties
17 of the position as set forth in this rule, and as
18 prescribed by the Director in accordance with the
19 following:

20 3.1. The Environmental Advocate will be guided in all
21 actions by the policy statement and the nine purposes set
22 forth in West Virginia Code §22-1-1 (b).

23 3.2. The Environmental Advocate may not in any

1 official capacity represent any person in, or file on
2 behalf of any person, legal or quasi-legal actions, either
3 in support of or opposed to the Division of Environmental
4 Protection without the expressed approval of the Director,
5 and under supervision of the Division of Environmental
6 Protection's General Counsel.

7 3.3. The Environmental Advocate may not in any
8 official capacity organize public campaigns in support of,
9 or in opposition to official positions taken by the
10 Division of Environmental Protection on environmental
11 matters, and will not in any official capacity actively
12 participate in any such organized campaign."

13 (k) ~~The director of the division of environmental~~
14 ~~protection is hereby authorized to propose for promulgation~~
15 ~~an emergency rule to amend a current legislative rule~~
16 ~~relating to monitoring of air quality legislative rule~~
17 filed in the state register on the fourteenth day of
18 August, one thousand nine hundred ninety-seven, authorized
19 under the authority of section four, article five, chapter
20 twenty-two, of this code, relating to the division of
21 environmental protection(to prevent and control particulate
22 air pollution from manufacturing process operations, 45 CSR
23 7) is authorized.

1 (1) The legislative rule filed in the state register
2 on the eighteenth day of March, one thousand nine hundred
3 ninety-seven, relating to the division of environmental
4 protection (yard waste composting, 47 CSR 38E) ~~is~~
5 authorized.

6

7 NOTE: The purpose of this bill is to authorize the
8 Division of Environmental Protection to promulgate a
9 legislative rule relating to the Prevention and Control of
10 Particulate Air Pollution From Manufacturing Process
11 Operations.

12

13 Strike-throughs indicate language that would be
14 stricken from the present law, and underscoring indicates
15 new language that would be added.