

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #2

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OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--
NOTICE OF EXTENSION OF COMMENT PERIOD

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

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 10

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from the
Emission of Sulfur Oxides"

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

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 28, 1999 AT 5:00 p.m.

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

Edward L. Kropp, Chief

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Edward L. Kropp/Kare G. Watson

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED



Executive Office
10 McJunkin Road
Nitro, West Virginia 25143-2506
Telephone: 304-759-0515
Fax: 304-759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

June 14, 1999

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


RE: 45CSR10 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE EMISSION OF SULFAR
OXIDES"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office as "Notice of Public Hearing/Comment Period."

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

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp
Karen Watson
Carrie Chambers

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

RULE TITLE: 45CSR10 - "To Prevent and Control Air Pollution from the Emission
of Sulfur Oxides"

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

B. SUMMARY OF RULE:

45CSR10 "To Prevent and Control Air Pollution from the Emissions of Sulfur Oxides" sets weight emissions standards for sulfur oxides from fuel burning units and manufacturing processes. The rule establishes monitoring, record keeping and reporting requirements and requirements for the registration of alternative emission limits for multiple stacks at a single source.

The revisions to 45CSR10 contained herein are intended to update definitions, clarify and streamline the monitoring, record keeping, and reporting requirements, eliminate unnecessary requirements and incorporate USEPA recommendations. The revisions also provide greater flexibility for the owner/operator to adjust emission limits for individual stacks. Other revisions are intended to harmonize this rule with other rules of the Office of Air Quality.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The purpose of 45CSR10 is to establish weight emission standards for sulfur oxides from fuel burning units and manufacturing processes. 45CSR10 is part of the West Virginia State Implementation Plan (SIP) approved by the USEPA to assure attainment and maintenance of attainment with the National Ambient Air Quality Standards for sulfur oxides. The revisions proposed herein were initiated by the Office of Air Quality as part of a broad effort to modernize and streamline all the Office rules. The current revision process is also intended to update and harmonize this rule with other rules of the Office of Air Quality. The proposed revisions are the result of a thorough review in a stakeholder process that was inclusive of the Office of Air Quality, representatives of the regulated community, concerned citizens and the environmental community.

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

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

E. CONSTITUTIONAL TAKINGS DETERMINATION:

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

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

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

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

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

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

ATTENDING:

Advisory Council Members:

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

Environmental Protection:

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

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

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

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

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

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

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

Karen began by bringing the Council up to date on the status of two OAQ rules that were filed during the last session (or late in the session). 45CSR8 revised the ambient air quality for sulfur oxides and particulate matter, and 45CSR9 pertained to ambient air quality standards for carbon monoxide and ozone. The DC Circuit Court of Appeals has ordered EPA to show how they arrived at the new standards - EPA may go back to the previous standards. Karen also apprised the Council on the N_{ox} State Implementation Plan. The Circuit Court stayed the implementation of that rule and there are no plans to develop any other amendments in the

immediate future. 45CSR28, which is the emissions trading rule that was filed late in the 1999 Session, was not taken up by the Legislature, but plans are to put the rule on the July agenda of the Interim Legislative Committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- **38CSR2 - "Surface Mining and Reclamation Rule"**
- **38CSR2A - "Rules for Mining and Restoration for Sandstone, Limestone, and Sand"**
- **38CSR2B - "RULES FOR MINING AND RECLAMATION OF MINERALS OTHER THAN COAL"**

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

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

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

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

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

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

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

199CSR1 - "SURFACE MINING BLASTING RULE"

Tony began by briefing the Council on the history of the Surface Mining Blasting Rule. This rule is being proposed to comply with SB681 - passed during the last session. This bill created the Office of Explosives and Blasting and the Office of Coalfield Community Development, which is under the West Virginia Development Office. The proposed rule will regulate blasting laws and rules associated with all surface-mining operations. All duties currently performed by OMR related to blasting, and all rules which now regulate blasting (38CSR2C) will be transferred to this new office. Besides regulating blasting on all surface mining operations, it will also implement and oversee pre-blast survey processes; maintain and operate a system to receive and address questions, concerns and complaints relating to mining

operations; determine the qualifications for individuals and firms performing pre-blast surveys; establish the education, training, examination and certification of blasters; administer a claims process for property damage caused by blasting; and conduct a study of blasting and make recommendations regarding any appropriate rule or code changes.

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

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

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

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

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

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

Barb described the proposed "new" rule relating to Groundwater Protection Standards at Steam Electric Generating Facilities. She noted that the rule is a result of a Notice of Intent filed on October 24, 1994, by the West Virginia Steam Electric Generation Industry, with the Director of DEP, in accordance with 47CSR57 to apply for a class variance for all West Virginia power stations and associated disposal sites. At that time, DEP provided AEP and AP with the

opportunity to conduct a four-year study to gather the necessary data to support their variance request. The objectives were met by assembling and reviewing data, estimating potential impacts to receptors, and performing an economic assessment impact analysis to the industry, commercial enterprises, and citizens at large if compliance with the Groundwater Protection Act were required without benefit of the variances. After review of the four-year study, the Director determined that granting this request for a variance at these locations would not pose adverse effects to human health or the environment. There are no human or environmental sensitive receptors between the coal storage areas or as ponds; therefore, it is unlikely there will be adverse affects. Barb gave each member a copy of the four-year study on which the Director made his determination.

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

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

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

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

Open Discussion:

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

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

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

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

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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR10 - "To Prevent and Control Air Pollution from the Emissions of Sulfur Oxides"

Type of Rule: Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East
Charleston, WV 25311-2599

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

2. Explanation of above estimates: The revisions proposed to 45CSR10 will have a negligible effect on the costs to the Office of Air Quality for continued implementation of this rule. Cost are covered under previous budget estimates.

3. Objectives of these rules: The object of this rule is to control and prevent air pollution by establishing standards for weight emissions of sulfur oxides. This rule is part of the West Virginia State Implementation Plan approved by USEPA for the attainment and maintenance of attainment of the National Ambient Air Quality Standards for sulfur oxides.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

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

The revisions proposed to rule 45CSR10 will have minimal economic impact on affected industries and in some cases may reduce costs through flexibility provided by the revisions.

C. Economic Impact on Citizens/Public at Large.

The revisions proposed to rule 45CSR10 will have no effect on citizens or the public at large.

Date: 6/11/99

Signature of Agency Head or Authorized Representative

Karen G. Watson
Karen G. Watson, Attorney

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

SERIES 10
TO PREVENT AND CONTROL AIR POLLUTION
FROM THE EMISSION OF SULFUR OXIDES

§45-10-1. General.

1.1. Scope.

1.1.a. The purpose of ~~Series 10~~ this rule is to prevent and control air pollution from the emission of sulfur oxides.

1.1.b. Fuel Quality Goals. -- It is the intent of the Director that all persons engaged in the burning of fuel make a maximum effort to utilize the best quality fuel available regardless of the requirements of this rule.

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

1.3. Filing Date. -- ~~April 27, 1994.~~

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

1.5. Former Rules -- This legislative rule amends 45CSR10 "To Prevent and Control Air Pollution From the Emission of Sulfur Oxides" which was filed April 27, 1994, and which became effective April 27, 1994.

§45-10-2. Definitions.

2.2.1. "Air Pollutants" means solids, liquids; or gases which, if discharged into the air, may result in a statutory air pollution.

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

2.3. ~~{RESERVED}~~ "Continuous Emission Monitoring System" means the total equipment

required for the determination of a gas concentration or emission rate, in the units of the standard.

2.4. "Director" means the ~~D~~director of the ~~D~~division of ~~E~~environmental ~~P~~protection or ~~his~~ ~~or~~ ~~her~~ ~~designated~~ ~~representative~~ such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

2.5. "Distillate Oil" means fuel oil that complies with the specifications for fuel oil numbers 1 and 2, as defined by the American Society for Testing and Materials in ASTM D396-98, "Standard Specification for Fuel Oils".

2.4.5-6. "Equivalent Fuel Sulfur Content" means that quantity of sulfur dioxide in pounds per million British Thermal Units (BTU's) which corresponds to a given percent sulfur in fuel being burned and is calculated on the basis of one hundred percent (100%) conversion of the sulfur to sulfur dioxide and assuming that no sulfur or sulfur dioxide recovery or control measures are employed.

2.8-7. "Fuel" means any form of combustible matter (solid, liquid, vapor; or gas) that is used as a source of heat.

2.6-8. "Fuel Burning Unit" means and include any furnace, boiler apparatus, device, mechanism, stack or structure used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer. For the purposes of this rule, all fuel burning units are classified in the following categories:

2.6-8.a. Type 'a' means any fuel burning unit which has as its primary purpose the

generation of steam or other vapor to produce electric power for sale.

2.6-8. b. Type 'b' means any fuel burning unit not classified as a Type 'a' or Type 'c' unit such as industrial pulverized-fuel-fired furnaces, cyclone furnaces, gas-fired and liquid-fuel-fired units.

2.6-8. c. Type 'c' means any hand-fired or stoker-fired fuel burning unit not classified as a Type 'a' unit.

2.9. "Indirect Heat Exchanger" means a device that combusts any fuel and produces steam or heats water or any other heat transfer medium. This term includes any duct burner that combusts fuel and is part of a combined cycle system. This term does not include process heaters as defined in subsection 2.18.

2.10. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

2.11. "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, pipe stills, reformers, furnaces associated with manufacturing processes, driers, crushers, grinders, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit sulfur dioxide or other sulfur compounds.

2.12. "Natural Gas" means (1) a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane, or (2) liquefied petroleum

(LP) gas, as defined by the American Society for Testing and Materials in ASTM D1835-97, "Standard Specification for Liquefied Petroleum Gases".

2.5-13. "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.

2.14. "Plant" means and includes all fuel burning units, source operations, equipment and grounds utilized in an integral complex.

~~2.10-15.~~ "Pollution Control Equipment" means any equipment used for collecting, confining, or converting air pollutants for the purpose of preventing or reducing the emission of these pollutants into the open air.

2.16. "Potential To Emit" for the purpose of subdivision 4.1.e means the maximum capacity of a source, on an annual basis, to emit any air pollutant under its physical and operational design, prior to any air pollution control equipment.

~~2.17. [RESERVED]~~

~~2.9-17.~~ "Priority I Regions", "Priority II Regions"; and "Priority III Regions" are defined in Table 45-10A found at the end of this rule.

~~2.18. "Division of Environmental Protection" or "DEP" means that Division of the West Virginia Division of Environmental Protection which is created by the provisions of W. Va. Code §22-1-1, et seq.~~

2.18. "Process Heater" means a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

~~2.12.19.~~ "Source Operation" means the last operation in a manufacturing process preceding the emission of air pollutants which operation:

~~2.12.19.~~ a. Results in the separation of the air pollutant from the process materials or in the conversion of the process materials into air pollutants; and

~~2.12.19.~~b. Is not an air pollution abatement operation.

~~2.16.19.~~ "Stack", for the purposes of this rule, means, but is not limited to, any duct, control equipment exhaust, or similar apparatus, which vents gases and/or particulate matter into the open air.

~~2.17.20.~~ "Sulfur Dioxide" is an air pollutant which is a nonflammable, nonexplosive, colorless, gaseous molecule composed of one (1) atom of sulfur and two (2) atoms of oxygen. In concentrations of 0.3 to 1.0 parts per million and above, most people can detect it by taste; in concentrations greater than 3.0 parts per million it has a pungent, irritating odor to most people.

~~2.7.21.~~ "Waste Heat Boiler" means any boiler which derives all or part of its heat input from the waste heat of a manufacturing process operation.

~~2.22.~~ Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W. Va. §22-5-1 et seq.

§45-10-3. Sulfur Dioxide Weight Emission Standards for Fuel Burning Units.

3.1. Total Allowable Emission Rates for Similar Units in Priority I and Priority II Regions: -- No person shall cause, suffer, allow; or permit the discharge of sulfur dioxide into the open air from all stacks located at one plant, measured in terms of pounds per hour, in excess of the amount determined as follows:

3.1.a. For fuel burning units of the Kammer Plant of Ohio Power Company, located in Air Quality Control Region I, the product of 6.8 and the total design heat inputs for such units

discharging through those stacks in million British Thermal Units (BTU's) per hour.

3.1.b. For fuel burning units of the Mitchell Plant of Ohio Power Company, located in Air Quality Control Region I, the product of 7.5 and the total actual operating heat inputs for such units discharging through those stacks in million BTU's per hour.

3.1.c. For fuel burning units of the Willow Island Station of Monongahela Power Company, located in Air Quality Control Region II, the product of 2.7 and the total design heat inputs for such units discharging from those stacks in million BTU's per hour.

3.1.d. For fuel burning units of the Mt. Storm Plant of Virginia Electric and Power Company, located in Air Quality Control Region VII, the product of 2.7 and the total design heat inputs for such units discharging through those stacks in million BTU's per hour.

3.1.e. For Type 'b' and Type 'c' fuel burning units, the product of 3.1 and the total design heat inputs for such units discharging through those stacks in million BTU's per hour.

3.2. Maximum Allowable Emission Rates for Similar Units in Region IV (Kanawha Valley Air Quality Control Region: Kanawha County, Putnam County, and Falls and Kanawha Magisterial Districts of Fayette County):--No person shall cause, suffer, allow; or permit the discharge of sulfur dioxide into the open air from all stacks located at one plant, measured in terms of pounds per hour, in excess of the amount determined as follows:

3.2.a. For fuel burning units of the John Amos Plant of Appalachian Power Company, located in Air Quality Control Region IV, the product of 1.6 and the total design heat input for such units discharging from those stacks in million BTU's per hour.

3.2.b. For fuel burning units of the Kanawha River Plant of Appalachian Power Company, located in Air Quality Control Region

IV, the product of 1.6 and the total design heat inputs for such units discharging through those stacks in million BTU's per hour.

3.2.c. For Type 'b' and Type 'c' fuel burning units, the product of 1.6 and the total design heat inputs for such units discharging through those stacks in million BTU's per hour, provided however, that no more than 5,500 pounds per hour of sulfur dioxide shall be discharged into the open air from all such stacks.

3.3. Maximum Allowable Emission Rates for Similar Units in All Priority III Regions Except Region IV. -- No person shall cause, suffer, allow, or permit the discharge of sulfur dioxide into the open air from all stacks located at one plant, measured in terms of pounds per hour, in excess of the amount determined as follows:

3.3.a. For fuel burning units of the Harrison Power Station of Monongahela Power Company, located in Air Quality Control Region VI, the product of 5.12 and the total actual operating heat inputs for such units discharging from those stacks in million BTU's per hour.

3.3.b. For fuel burning units of the Rivesville Power Station of Monongahela Power Company, located in Air Quality Control Region VI, the product of 3.2 and the total design heat inputs for such units discharging from those stacks in million BTU's per hour.

3.3.c. For fuel burning units of the Albright Power Station of Monongahela Power Company, located in Air Quality Control Region VI, the product of 3.2 and the total design heat inputs for such units discharging from those stacks in million BTU's per hour.

3.3.d. For fuel burning units of the Fort Martin Power Station of Monongahela Power Company, located in Air Quality Control Region VI, the product of 3.1 and the total actual operating heat inputs for such units discharging from those stacks in million BTU's per hour.

3.3.e. For fuel burning units of the Philip Sporn Plant of Central Operating Company, located

in Air Quality Control Region III, the product of 3.2 and the total design heat inputs for such units discharging from those stacks in million BTU's per hour.

3.3.f. For Type 'b' and Type 'c' fuel burning units, the product of 3.2 and the total design heat inputs for such units discharging through those stacks in million BTU's per hour.

3.4. Allowable Emission Rates for Individual Stacks.

3.4.a. Unless otherwise approved by the Director, ~~the~~ maximum allowable emission rate for an individual stack shall not exceed by more than twenty-five percent (25%) the emission rate determined by prorating the total allowable emission rate specified in subsections 3.1, 3.2, or 3.3, on the basis of individual unit heat input at design capacity for all fuel burning units discharging through that stack.

3.4.ba.1. Subject to the provisions of this ~~rule~~ section, allowable emission rates for individual stacks shall be determined by the owner and/or operator and registered with the Director at the request of and on forms provided by the Director. Such rates shall be subject to review and approval by the Director.

3.4.ca.2. The approved set of individual stack allowable emission rates shall become an official part of the compliance schedule and any permits concerning such source or sources, and shall not be changed without the prior written approval of the Director.

3.4.b. The owner or operator of a source subject to subsections 3.1, 3.2 or 3.3 of this rule which has more than one stack, may petition the Director for individual stack allowable emission rates differing from those calculated under subdivision 3.4.a. The Director may approve such request provided that:

3.4.b.1. For each scenario the sum of the maximum allowable emission rates for each stack shall not exceed the total allowable emission

rate specified in subsection 3.1, 3.2 or 3.3 for all stacks located at one plant;

3.4.b.2. The application shall include, but not be limited to, the maximum proposed emission rate for each individual stack for each proposed operating scenario;

3.4.b.3. The owner or operator shall install a certified continuous emissions monitoring system (CEMS) to monitor sulfur dioxide emissions for each stack. Such CEMS shall be installed, certified, operated and maintained as specified in 40 CFR Part 60, Appendix B, Performance Specification 2 (PS2). Sources meeting the requirements of 40 CFR Part 75 (Acid Rain) shall be deemed to have satisfied the requirements of PS2;

3.4.b.4. The owner or operator shall demonstrate to the Director's satisfaction that for each operating scenario approved the source will not cause or contribute to a violation of the National Ambient Air Quality Standard for sulfur dioxide;

3.4.b.5. The Director shall not approve a relaxation of a technology-based emission limitation for a specific unit or stack that has been established pursuant to any other rule, permit or consent order nor shall the Director approve a relaxation in emission limits previously established for the purpose of avoiding the permitting requirements of 45CSR14 or 45CSR19; and

3.4.b.6. Any approval of an individual stack allowable emission rate by the Director pursuant to subdivision 3.4.b shall be embodied in a permit issued as an existing stationary source permit in accordance with 45CSR13.

3.5. The design heat input of a waste heat boiler shall not be included in computing the total plant design heat input for the purposes of subsections 3.1, 3.2, 3.3 or 3.4. ~~of this rule.~~

3.6. No person shall circumvent the provisions of this rule by constructing fuel burning unit(s) larger than would be necessary to provide heat

and/or power for an existing manufacturing plant, with a reasonable margin for plant expansion, in order to use that design heat input to raise the allowable sulfur content in fuel.

3.7. No person shall cause, suffer, allow; or permit the discharge of sulfur dioxide to the open air from the combustion of fuel in a fuel burning unit of a waste heat boiler in excess of 2.2 pounds of sulfur dioxide per million BTU's of heat input per hour. This limitation is based on the heat input provided to the boiler by the combustion of this auxiliary fuel.

3.7.a. The provision of this subsection applies only to the fuel used for the waste heat boiler(s) and does not replace or supersede the provisions of subsection ~~3.8~~4.1.

~~6.1.b.3.8.~~ Tests to determine compliance with the allowable sulfur dioxide emission limitations from fuel burning units shall be based on a continuous twenty-four (24) hour averaging time. The owner and/or operator of a fuel burning unit shall not allow emissions to exceed the weight emissions standards for sulfur dioxide as set forth in this rule, except during one (1) continuous twenty-four (24) hour period in each calendar month and during this one (1) continuous twenty-four hour period said owner and/or operator shall not allow emissions to exceed such weight emission standards by more than ten percent (10%) without causing a violation of this rule. ~~A standard starting time for all continuous twenty-four (24) hour periods shall be fixed in writing by mutual agreement between the Director and the owner and/or operator of the fuel burning unit. A continuous twenty-four (24) hour period is defined as one (1) calendar day.~~

~~3.8.45-10-4.~~ **Weight Emission Standards for Manufacturing Process Source Operations.**

~~3.8.a.4.1.~~ No person shall cause, suffer, allow; or permit; the emission into the open air from any source operation an in-stack sulfur dioxide concentration exceeding 2,000 parts per million by volume from existing source operations, except as provided in subdivisions ~~3.8.b.4.1.a~~ through ~~3.8.f.4.1.e.~~

~~3-8.b.4.1.a.~~ No person shall cause, suffer, allow; or permit sulfur dioxide tail gas emissions from sulfuric acid manufacturing plants to exceed the following:

~~b.1-4.1.a.1.~~ For plants using elemental sulfur as a feed stock, 30 pounds per ton of acid produced.

~~b.2-4.1.a.2.~~ For plants using other materials as a feed stock, 40 pounds per ton of acid produced.

~~3-8.c.4.1.b.~~ No person shall cause, suffer, allow; or permit the emission of sulfur oxides, calculated as sulfur dioxide, from a sulfur recovery plant to exceed 0.06 pounds per pound of sulfur processed.

~~3-8.c.4.1.c.~~ No person shall cause, suffer, allow; or permit the emission of sulfur oxides, calculated as sulfur dioxide, from primary non-ferrous smelters to exceed that determined by the following equations:

Copper Smelters: $Y = 0.2X$

Zinc Smelters: $Y = 0.564X^{0.85}$

Lead Smelters: $Y = 0.98X^{0.77}$

~~Where~~, X is the total sulfur fed to the smelter in pounds per hour and Y is the allowable sulfur dioxide emissions in pounds per hour.

~~3-8.f.4.1.d.~~ No person shall cause, suffer, allow; or permit the total sulfite pulp mill emissions of sulfur oxides, calculated as sulfur dioxide, from operations such as blow pits, washer vents, storage tanks, digester relief; and recovery system, to exceed nine (9.0) pounds per air-dried ton of pulp produced.

~~4.1.e.~~ The owner or operator of a manufacturing process source operation(s) which has the potential to emit less than 500 pounds per year of sulfur oxides.

~~6-1-a.4.2.~~ Tests to determine compliance with the allowable sulfur dioxide emission

concentration limitations from manufacturing process source operation(s) set forth in this rule shall be based on a block two (2) three (3) hour averaging time.

~~3-8.d.~~ **§45-10-5. Combustion of Refinery or Process Gas Streams.**

~~3-8.d.1.5.1.~~ No person shall cause, suffer, allow; or permit the combustion of any refinery process gas stream or any other process gas stream that contains hydrogen sulfide in a concentration greater than 50 grains per 100 cubic feet of gas except in the case of a person operating in compliance with an emission control and mitigation plan approved by the Director and U. S. EPA pursuant to ~~subparagraph (2) subdivision 5.2.a. of this subsection.~~ In certain cases very small units may be considered exempt from this requirement if, in the opinion of the Director, compliance would be economically unreasonable and if the contribution of the unit to the surrounding air quality could be considered negligible.

~~3-8.d.2.5.2.~~ Any owner or operator of a by-product coke production facility in existence on the effective date of this rule who can demonstrate to the Director that there is no practical alternative to scheduled maintenance (including shutdown) of desulfurization equipment may request the approval of an enforceable, temporary sulfur dioxide emissions control and mitigation plan for such maintenance period. In order for a plan under this paragraph to be approved the plan must meet the following conditions:

~~3-8.d.2.A.5.2.a.~~ Provide that all feasible control measures and process changes will be employed at the coke production facility to reduce emissions of sulfur dioxide (including reduction of coke oven gas generation) during the control system outage.

~~3-8.d.2.B.5.2.b.~~ Provide for a definitive reduction in sulfur dioxide emissions by the establishment of unit-specific allowable emission rates for all emissions units of the stationary source sufficient to prevent any violation of federal and state ambient air quality standards or applicable air quality increments for sulfur dioxide.

~~3.8.d.2.C.5.2.c.~~ Provide that system down-time and excess sulfur dioxide emissions be reduced to the greatest extent possible by use of increased or contract maintenance personnel, maximized maintenance labor shifts; and optimization of available spare parts inventories.

~~3.8.d.2.D.5.2.d.~~ Provide for emissions and compliance monitoring as required by the Director in the approved plan during the maintenance periods and for the submission of reports of such monitoring and tests within time-frames specified by the Director in the approved plan. All approved plans shall require that a certified report of excess sulfur dioxide emissions from the by-product coke production facility and offsetting emission units be submitted to the Director within thirty (30) days after the end of the maintenance period.

~~3.8.d.2.E.5.2.e.~~ Provide that no maintenance period exceed fourteen (14) days in length nor occur more than twice in any calendar year.

~~3.8.d.2.F.5.2.f.~~ Provide at least two weeks notice of all scheduled maintenance periods, the anticipated length of the maintenance period, work to be completed, measures to be taken to minimize the length of desulfurization system down-time and such other information as the Director may specify.

~~3.8.d.2.G.5.2.g.~~ Provide for annual review, if necessary, modification or termination of the plan by the Director.

~~3.8.d.2.H.5.2.h.~~ Provide that the Director may impose limitations on emission units that are more restrictive than those provided for in the plan as necessary to assure attainment of air quality standards for sulfur dioxide in light of data provided pursuant to ~~subparagraph F subdivision 5.2.f. of this subsection,~~ or any other information available to the Director.

5.3. The Director shall, in making a determination concerning plan modification or termination, review the plant's compliance history and records to determine whether the plan has prevented or minimized, to the extent feasible, desulfurization system outages and excess

emissions. The initial approval of the plan and any modification of the plan shall be accomplished as a revision to the State Implementation Plan.

5.4. Tests to determine compliance with the allowable hydrogen sulfide concentration limitations for combustion sources set forth in this rule shall be based on a block three (3) hour averaging time.

§45-10-46. Registration.

~~46.1.~~ Within thirty (30) days after the effective date of this rule all persons owning and/or operating a source(s) of sulfur dioxide subject to this rule and not previously registered shall have registered such source(s) with the Director. The information required for registration shall be determined and provided in the manner specified by the Director. Registration forms should be requested from the Director by the owner and/or operator of such source(s).

~~46.2.~~ The owner and/or operator of a source(s) of sulfur dioxide that is under construction or on which construction is initiated within thirty (30) days after the effective date of this rule shall register such source(s) within this thirty (30) day period.

§45-10-57. Permits.

~~57.1. After the effective date of this rule, no~~ person shall construct, or modify or relocate any source of sulfur dioxide without first obtaining a permit ~~for such construction, or modification or relocation.~~ Applications for permits shall be made upon forms available from the Director and shall be filed no less than ninety (90) days prior to the construction or modification. These forms shall include such information as in the judgment of the Director will enable him or her to determine whether such source(s) will be so designated as to operate in conformance with the provisions of this rule and other applicable rules, the Code of West Virginia W. Va. Code §22-1-1 et seq., and will not cause or contribute to the violation of applicable ambient Air Quality Standards. Within ninety (90) days of the receipt of an application the Director shall issue or deny such permit in

accordance with the provisions of W. Va. Code §22-5-1 et seq., and ~~45CSR13~~ Series 13, 14, 19 and 30 of Title 45.

§45-10-68. Reports and Testing. Testing, Monitoring, Record Keeping and Reporting.

8.1. Testing.

~~6.3.8.1.a.~~ 6.3.8.1.a. At such reasonable times as the Director may designate, the owner or operator of a ~~source(s) of sulfur dioxide any fuel burning unit(s), manufacturing process source(s) or combustion source(s)~~ source(s) may be required to conduct or have conducted tests to determine the compliance of such source(s) with the emission limitations of ~~Sections 3, 4 or 5.~~ Sections 3, 4 or 5. 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~~ accordance with the appropriate test method set forth in 40 CFR Part 60, Appendix A, Method 6, Method 15 or other equivalent EPA testing method approved by the Director. The Director, or his or her duly authorized representative, may at his or her option witness or conduct such tests. Should the Director exercise his or her option to conduct such tests, the operator will provide all necessary sampling connections and sampling ports to be located in such manner as the Director may require, power for test equipment, and the required safety equipment such as scaffolding, railings, and ladders to comply with generally accepted good safety practices.

~~6.4.8.1.b.~~ 6.4.8.1.b. The Director, or his duly authorized representative, may conduct such other tests as he or she may deem necessary to evaluate air pollution emissions other than those noted in section 3.

~~6.5.~~ 6.5. ~~The operators of the fuel burning units or persons selling fuel shall submit data on the fuel used or sold for use in such units. Such data shall be reported in the manner the Director may specify. However, reports on such data shall not exceed one (1) per month. Such reports must be filed within fifteen (15) days of the end of the established reporting period and will include, but not necessarily be limited to, information such as the~~

~~quantity of fuel burned or sold and the sulfur, moisture, volatile matter, and the BTU content.~~

6.2.8.2. Monitoring.

~~6.2.a.8.2.a.~~ 6.2.a.8.2.a. At the request of the Director the owner and/or operator of a source shall install such stack gas monitoring devices as the Director deems necessary to determine compliance with the provisions of this rule. The data from such devices shall be readily available at the source location or such other reasonable location that the Director may specify. At the request of the Director, or his or her duly authorized representative, such data shall be made available for inspection or copying. Failure to promptly provide such data shall constitute a violation of this rule.

~~6.2.b.8.2.b.~~ 6.2.b.8.2.b. Prior to the installation of calibrated stack gas monitoring devices, sulfur dioxide emission rates shall be calculated on an equivalent fuel sulfur content basis.

8.2.c. The owner or operator of fuel burning unit(s), manufacturing process source(s) or combustion source(s) shall demonstrate compliance with sections 3, 4 and 5 of this rule by testing and/or monitoring in accordance with one or more of the following: 40 CFR Part 60, Appendix A, Method 6, Method 15, continuous emissions monitoring systems (CEMS) or fuel sampling and analysis as set forth in an approved monitoring plan for each emission unit.

8.2.c.1. The installation, operation and maintenance of a continuous monitoring system meeting the requirements of 40 CFR 60, Appendix B, Performance Specification 2 (PS2) or Performance Specification 7 (PS7) shall be deemed to fulfill the requirements of a monitoring plan for a fuel burning unit(s), manufacturing process source(s) or combustion source(s). CEMS meeting the requirements of 40 CFR Part 75 (acid Rain) will be deemed to have satisfied the requirements of PS2.

8.2.c.1.A. The owner or operator of a continuous emissions monitoring system installed pursuant to this rule shall follow the

quality assurance requirements as set forth in 40 CFR Part 60, Appendix F.

8.2.c.2. Monitoring plans pursuant to subsection 8.5 shall be submitted to the Director within six (6) months of the effective date of this rule. Approval or denial of such plans shall be within twelve (12) months of the effective date of this rule.

8.2.c.3. A fuel sampling and analysis program, including a record of fuel consumption, may fulfill the requirements of a monitoring plan for a fuel burning unit(s). The minimum requirements for a fuel sampling and analysis program, including fuel consumption records, shall be established by the Director and set forth in an interpretive rule as authorized pursuant to W.Va. Code §29A-1-2.

8.2.d. Excursions outside the range of the control equipment or operational parameters established in an approved monitoring plan will not necessarily constitute a violation of this rule.

8.3. Recordkeeping and Reporting.

8.3.a. The owner or operator of fuel burning unit(s), manufacturing process source(s) or combustion source(s) subject to sections 3, 4 or 5 rule shall maintain on-site a record of all required monitoring data as established in a monitoring plan pursuant to subdivision 8.2.c. Such records shall be made available to the Director or his duly authorized representative upon request. Such records shall be retained on-site for a minimum of two years.

8.3.b. The owner or operator shall submit a periodic exception report to the Director, in a manner specified by the Director and set forth in an interpretive rule as authorized pursuant to W.Va. Code §29A-1-2. Such an exception report shall provide details of all excursions outside the range of measured emissions or monitored parameters established in an approved monitoring plan and shall include, but not be limited to, the time of the excursion, the magnitude of the excursion, the duration of the excursion, the cause of the excursion and the corrective action taken.

8.3.c. The owner or operator of a fuel burning unit(s) or a combustion source(s) shall maintain records of the operating schedule and the quantity and quality of fuel consumed in each unit in a manner specified by the Director and set forth in an interpretive rule as authorized pursuant to W.Va. Code §29A-1-2. Such records are to be maintained on-site and made available to the Director or his duly authorized representative upon request.

8.3.c.1. The owner or operator of a fuel burning unit(s) utilizing CEMS to fulfill the requirements of subdivision 8.2.c shall be exempt from the requirements of subdivision 8.3.c.

8.3.d. Where appropriate the owner or operator of a fuel burning unit(s), manufacturing process unit(s) or combustion source(s) may maintain such records in electronic form.

8.3.e. The Director may publish, and from time to time revise, monitoring, testing, recordkeeping and reporting instructions implementing the provisions of this rule in the form of an interpretive rule as authorized pursuant to W.Va. Code §29A-1-2.

§45-10-7. Compliance Programs and Schedules:

~~7.1. In the event that a source(s) of sulfur dioxide in existence prior to the adoption of this rule does 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 source. 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.~~

~~7.2. In the event that an owner or operator of such a source(s) of sulfur dioxide fails to submit a program or an acceptable program and schedule, the Director shall, by order, determine the compliance program and schedule.~~

§47-10-89. Variance.

89.1. Due to unavoidable malfunction of equipment or inadvertent fuel shortages, 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 equipment malfunction or fuel shortage. In cases of major equipment failure or extended shortages of conforming fuels, 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.

§45-10-910. Exemptions and Recommendations.

910.1. ~~Any~~ fuel burning units having a design heat input under ten (10) million BTU's per hour will be exempt from section 3; ~~and sections 6 through section 8.~~ However, failure to attain acceptable air quality in parts of some urban areas may require the mandatory control of these sources at a later date.

910.2. In an effort to avoid the necessity for such mandatory controls the Director strongly recommends that specific fuel quality objectives be met. In Priority I and Priority II regions and in cities in Priority III regions with a population of more than 10,000 (based on the latest census) the Director recommends that no person use or provide for sale fuel having a sulfur content greater than that listed in the following table (at the end of this rule) Table 45-10B for use in residential and other fuel burning units not otherwise restricted by this rule.

10.3. The owner or operator of a fuel burning unit(s) which combusts natural gas, wood or distillate oil, alone or in combination, shall be exempt from the requirements of section 8. Manufacturing operations in which the process is to partially combust wood during the manufacture of charcoal shall be exempt from the requirements of section 8.

§45-10-10. Severance.

~~—The provisions of this rule are severable and if any provision or part thereof shall be held invalid, unconstitutional, or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sections, or parts of this rule or their application to other persons and circumstances.~~

§45-10-11. Circumvention.

11.1. No owner or operator subject to the provisions of this rule shall build, erect, install, modify or use any article, machine, equipment or process, the use of which purposely conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous diluents to achieve compliance with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.

§45-10-12. Inconsistency Between Rules.

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

TABLE 45-10A

Priority Classification	Federal Air Quality Control Region	Included West Virginia Counties
I	Region I, Steubenville-Weirton-Wheeling Interstate Air Quality Control Region (Ohio - West Virginia)	Brooke Hancock Marshall Ohio
	Region VII, Cumberland-Keyser Interstate Air Quality Control Region (West Virginia - Maryland)	Grant (Union District only) Mineral (Elk, New Creek, and Piedmont Districts)
II	Region II, Parkersburg-Marietta Interstate Air Quality Control Region (West Virginia - Ohio)	Jackson Pleasants Tyler Wetzel Wood
III	All other regions	All other counties or districts not listed above

TABLE 45-10B

EFFECTIVE DATE	PERCENT SULFUR CONTENT OF FUELS	
	Coal	Oil
June 30, 1972	3.0	2.0
June 30, 1975	2.0	1.5
June 30, 1978	1.0	0.5