

**WEST VIRGINIA  
SECRETARY OF STATE  
Betty Ireland  
ADMINISTRATIVE LAW DIVISION**

Form #1

Do Not Mark In This Box

FILED  
2007 NOV 14 PM 3:53

OFFICE OF THE  
SECRETARY OF STATE

**NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: WVDEP - Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15

TITLE OF RULE BEING AMENDED: Repeal -- Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR part 61

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

DATE OF PUBLIC HEARING: December 17, 2007 TIME: 6:00 P.M.

LOCATION OF PUBLIC HEARING: West Virginia Department of Environmental Protection

Dolly Sods Conference Room - Room # 1125

601 57th Street, SE  
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL  WRITTEN  BOTH

DATE WRITTEN COMMENT PERIOD ENDS: December 17, 2007 TIME: 6:00 P.M.

WRITTEN COMMENTS MAY BE MAILED TO:

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

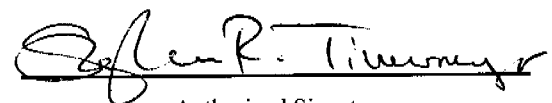
John Benedict, Director  
WVDEP - Division of Air Quality

601 57th Street, SE

Charleston, WV 25304

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

  
Authorized Signature

#3.20

## **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

### **BRIEFING DOCUMENT**

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR15 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public.

The substantive provisions of 45CSR15 have been updated and included in the provisions of the agency-approved rule 45CSR34, previously filed with the Secretary of State on July 25, 2007, and proposed for authorization by the 2008 Legislature.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 45CSR15 - "Emission Standards For Hazardous Air Pollutants Pursuant To 40 CFR Part 61"

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency: Division of Air Quality

Address: 601 57<sup>th</sup> Street SE  
Charleston, WV 25304

Phone Number: 926-0475

Email: tmowrer@wvdep.org

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR15 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public.

The substantive provisions of 45CSR15 have been updated and included in the provisions of the agency-approved rule 45CSR34, previously filed with the Secretary of State on July 25, 2007, and proposed for authorization by the 2008 Legislature. The proposed repeal of this rule should cause no additional impact on costs and revenues of state government.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

**FISCAL YEAR**

Effect of Proposal	2008 Increase/Decrease (use "-")	2009 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

Rule Title: 45CSR15 - "Emission Standards For Hazardous Air Pollutants Pursuant To 40 CFR Part 61"

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

The proposed repeal of this rule will have no effect on the costs to the Division of Air Quality. Refer to above explanation.

### MEMORANDUM

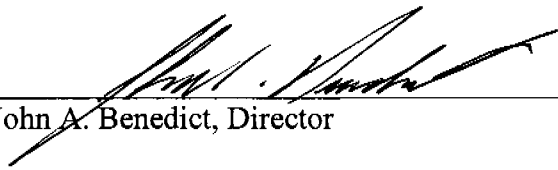
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR15 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public.

The substantive provisions of 45CSR15 have been updated and included in the provisions of the agency-approved rule 45CSR34, previously filed with the Secretary of State on July 25, 2007, and proposed for authorization by the 2008 Legislature. The proposed repeal of this rule should cause no additional impact on costs and revenues of state government.

Date: November 14, 2007

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
John A. Benedict, Director

**TITLE 45  
LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY**

**SERIES 15  
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS  
PURSUANT TO 40 CFR PART 61**

**§45-15-1. General:**

— 1.1. ~~Scope.~~ -- This rule establishes and adopts emission standards for hazardous air pollutants promulgated by the United States Environmental Protection Agency pursuant to 40 CFR Part 61 and section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

— 1.2. ~~Authority.~~ -- W. Va. Code §22-5-4.

— 1.3. ~~Filing Date.~~ -- April 28, 2006.

— 1.4. ~~Effective Date.~~ -- June 1, 2006.

— 1.5. ~~Incorporation by Reference.~~ -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 CFR Parts 61 and 65, to the extent referenced in 40 CFR Part 61, effective June 1, 2005.

— 1.6. ~~Former Rules.~~ -- This legislative rule amends 45CSR15 "Emission Standards For Hazardous Air Pollutants Pursuant to 40 CFR Part 61" which was filed May 20, 2005, and which became effective June 1, 2005.

**§45-15-2. Definitions:**

— 2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

— 2.2. "Clean Air Act" ("CAA") means 42 U.S.C. §7401 et seq.

— 2.3. "Hazardous air pollutant" means any air pollutant listed pursuant to 40 CFR Part 61.01(a).

— 2.4. "Secretary" means the Secretary of the Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

— 2.5. Other words and phrases used in this rule, unless otherwise indicated, will have the meaning ascribed to them in 40 CFR Part 61. Words and phrases not defined therein will have the meaning given to them in the federal Clean Air Act.

**§45-15-3. Requirements:**

— 3.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, reconstructed, modified, or operated any source subject to the provisions of 40 CFR Part 61 which results or will result in a violation of this rule.

**§45-15-4. Adoption of Standards:**

— 4.1. ~~Standards.~~ -- The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Parts 61 and 65, to the extent referenced in 40 CFR Part 61, including any

reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 65, effective June 1, 2005, for the purposes of implementing a program for emission standards for hazardous air pollutants, except as follows:

4.1.a. 40 CFR §61.16 is amended to provide that information shall be available to the public in accordance with W. Va. Code §§22-5-1 et seq., 29B-1-1 et seq., and 45CSR31; and

4.1.b. Subparts B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of 40 CFR Part 61 will be excluded.

#### **§45-15-5. Secretary.**

5.1. Any and all references in 40 CFR Parts 61 and 65 to the "Administrator" are amended to be the "Secretary" except as follows:

5.1.a. where the federal regulations specifically provide that the Administrator will retain authority and not transfer authority to the Secretary;

5.1.b. where provisions occur which refer to:

5.1.b.1. alternate means of emission limitations;

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

5.1.b.5. alternate monitoring methods;

5.1.b.6. waivers/adjustments to record-keeping and reporting;

5.1.b.7. emissions averaging; or

5.1.b.8. applicability determinations; or

5.1.c. where the context of the regulation clearly requires otherwise.

#### **§45-15-6. Permits.**

6.1. Nothing contained in this adoption by reference must be construed or inferred to mean that permit requirements in accordance with applicable rules will in any way be limited or inapplicable.

#### **§45-15-7. Inconsistency Between Rules.**

7.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, the inconsistency will be resolved by the determination of the Secretary and the determination will be based upon the application of the more stringent provision, term, condition, method or rule.