

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

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**FILED**

2005 MAY 20 P 4: 04

Form #6

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: WV Dept. of Environmental Protection - Div. of Air Quality TITLE NUMBER: 45

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15

TITLE OF RULE BEING AMENDED: Emission Standards for Hazardous Air Pollutants

Pursuant to 40 CFR Part 61

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

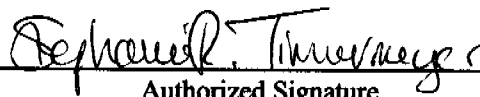
TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2723

SECTION § §64-3-1(b), PASSED ON April 8, 2005

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: June 1, 2005

  
Authorized Signature

Stephanie R. Timmermeyer, Secretary

#2.60

2005 MAY 20 P 4: 04

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

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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. -- May 20, 2005.

1.4. Effective Date. -- June 1, 2005.

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 July 1, 2004.

1.6. Former Rules. -- This legislative rule amends 45CSR15 "Emission Standards For Hazardous Air Pollutants Pursuant to 40 CFR Part 61" which was filed April 30, 2004, and which

became effective June 1, 2004.

**§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 such 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, shall have the meaning ascribed to them in 40 CFR Part 61. Words and phrases not defined therein shall 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 July 1, 2004, 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., W.Va. Code 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 shall 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 shall retain authority and not transfer such authority to the State;

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 shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall 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, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.