



BUREAU OF ENVIRONMENT
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Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
COMMISSIONER

December 18, 1998

Ms. Judy Cooper
Director
Administrative Law Division
Capitol Complex
Charleston, WV 25305

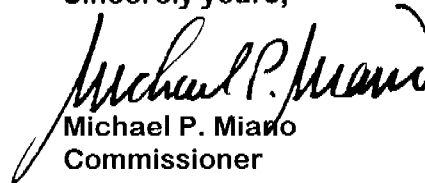
RE: 45CSR16 - "Standards of Performance for New Stationary
Sources Pursuant to 40 CFR Part 60"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced legislative rule with your Office and the Legislative Rule-Making Review Committee as Notice of Rule Modification of a Proposed Rule.

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 in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: John Johnston
Karen Watson
Carrie Chambers

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

FILED
JAN 5 9 43 AM '99
OFFICE OF THE CLERK
SECRETARY OF STATE

SERIES 16
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
PURSUANT TO 40 CFR PART 60

§45-16-1. General.

1.1. Scope. -- This rule adopts standards of performance for new stationary sources promulgated by the United States Environmental Protection Agency ~~under~~ pursuant to 42 U.S.C. 7411(b) [C.A.A. §111(b)] of the federal Clean Air Act, as amended. It is the intent of the Director to adopt these standards by reference. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to such standards.

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

1.3. Filing Date. -- ~~May 30, 1997.~~

1.4. Effective Date. -- ~~June 1, 1997.~~

1.5. Incorporation By Reference -- Federal Counterpart Regulation. The Director has determined that a federal counterpart rule exists, in accordance with the Director's recommendation, and with limited exception, this rule incorporates by reference 40 CFR Part 60, effective July 1, 1997, as amended by the Federal Register through June 1, 1998.

§45-16-2. Requirements.

2.1. No person may construct, reconstruct, modify, or operate or cause to be constructed, modified, or operated a New Source Performance Standard (NSPS) source which results or will result in violations of this rule.

§45-16-3. Adoption of Standards.

3.1. Standards. -- ~~Standards of performance~~

~~for new stationary sources including associated reference methods, performance specifications and other test methods which are appended to such standards promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. 7411(b) [C.A.A. §111(b)] of the federal Clean Air Act, as amended, as of June 15, 1996, and contained in 40 CFR Part 60 are hereby adopted in their entirety and incorporated herein by reference.~~ The Director hereby adopts and incorporates by reference the provisions of 40 CFR Part 60 including any reference methods, performance specifications and other test methods which are appended to such standards and contained in 40 CFR Part 60, effective July 1, 1997, as amended by the Federal Register through June 1, 1998, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

3.1.a. Part 60.9 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.

3.1.b. Sub-parts B, C, Ca, Cb, Cc, ~~Ce~~, Ea, ~~Ec~~, and ~~Ea~~WWW of 40 CFR Part 60 shall be excluded.

§45-16-4. Director.

4.1. Any and all references in said 40 CFR Part 60 to the "Administrator" of the United States Environmental Protection Agency ~~is~~ are amended to be the "Director" of the West Virginia Division of Environmental Protection except ~~in the following references which such references shall remain "Administrator of the United States Environmental Protection Agency" as follows:~~

4.1.a. ~~Part 60.2~~ where the federal regulations specifically provide that the Administrator shall retain authority and not transfer such authority to the State:

4.1.b. ~~Part 60.4~~ where provisions occur which refer to:

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

4.1.b.2. alternate control technologies;

4.1.b.3. innovative technology waivers;

4.1.b.4. alternate test methods;

4.1.b.5. alternate monitoring methods;

4.1.b.6. wavers/adjustments to recordkeeping and reporting;

4.1.b.7. emissions averaging;

4.1.b.8. a p p l i c a b i l i t y determinations; or

4.1.b.9. the authority to require testing under Section 114 of the Clean Air Act, as amended; or

4.1.c. ~~Part 60.8(b)(2)~~ where the context of the regulation clearly requires otherwise.

~~4.1.d. Part 60.8(b)(3):~~

~~4.1.e. That sentence of part 60.8(b) which deals with the authority of the Administrator to require testing under Section 114 of the Clean Air Act, as amended:~~

~~4.1.f. Part 60.11(c)2).~~

~~4.1.g. Part 60.13(c).~~

~~4.1.h. Part 60.45(a).~~

~~4.1.i. Part 60.194(d).~~

~~4.1.j. Part 60.332(a).~~

~~4.1.k. Part 60.335(f)(1).~~

~~4.1.l. Part 60.335(f)(1).~~

~~4.1.m. Part 60.33b(d)(2)~~

~~4.1.n. Part 60.39b(b)~~

~~4.1.o. Part 60.50b(n)~~

~~4.1.p. Part 60.51b~~

~~4.1.q. Part 60.53b(b)(2)~~

~~4.1.r. Part 60.53b(c)(2)~~

~~4.1.s. Part 60.58b(c)(14)~~

~~4.1.t. Part 60.58b(h)(12)~~

§45-16-5. Permits.

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

§45-16-6. Inconsistency Between Rules.

6.1. In the event of any inconsistency between this rule and any other existing 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.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Office of Air Quality
Subject: Standards of Performance for New Stationary Sources
Pursuant to 40 CFR Part 60
CSR Cite: 45CSR16
Counsel: JAA

PERTINENT DATES

Filed for public comment: June 16, 1998
Public comment period ended: July 21, 1998
Filed following public comment period: July 31, 1998
Filed LRMRC: July 31, 1998
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

The current rule is being updated by incorporating new reference dates to federal Clean Air Act requirements in Sections 1 and 3 of the rule. The rule establishes new pollution source performance standards required under 40 CFR part 60. The new federal provisions relate to nonmetallic minerals processing plants, flares, metal emissions, and the phosphate fertilizer industry.

AUTHORITY

Statutory authority: W.Va. Code §22-5-1, which reads as follows:

(a) The director is authorized:

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof....

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.



FILED

DEC 21 2 07 PM '98

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

December 15, 1998

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: John H. Johnston
Office of Air Quality
1558 Washington St., East
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60, 45CSR16**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.