

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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FILED

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OFFICE OF THE SECRETARY OF STATE

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

Division of Environmental Protection
AGENCY: Office of Air Quality TITLE NUMBER: 45CSR16

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR16

TITLE OF RULE BEING AMENDED: Standards of Performance for New Stationary Sources

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

TITLE OF RULE BEING PROPOSED: _____

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

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 2134

SECTION 64-3-1(c), PASSED ON March 10, 1995

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: May 1, 1995

Roger Hall

AUTHORIZED SIGNATURE

Roger Hall

LEGISLATIVE HISTORY ABSTRACT
45CSR16

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Bureau of Environment
Division of Environmental Protection
Office of Air Quality
House Bill 2134, Section 64-3-1(c)

- 06/21/94 Filed Notice of Public Hearing with Secretary of State.
- 06/21/94 Initial Filing with Legislative Rule-Making Review Committee.
- 07/29/94 Held Public Hearing.
- 07/29/94 End of Public Comment Period.
- 08/15/94 Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
- 11/13/94 Hearing Before the Legislative Rule-Making Review Committee.
- 11/13/94 Rule Approved by Legislative Rule-Making Review Committee with Modifications.
- 11/14/94 Legislative Rule-Making Review Committee Recommends that the Legislature Authorize the Agency to Promulgate 45CSR16 as Modified.
- 11/23/94 Modified Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
- 03/10/95 Passed the West Virginia Legislature.
- 03/24/95 Approved by the Governor.
- 04/30/95 Rule Final Filed with Secretary of State.
- 05/01/95 Effective Date of Rule.

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

45-35 1 (a) The legislative rules filed in the state register on the
 2 twelfth day of August, one thousand nine hundred
 3 ninety-four, modified by the division of environmental
 4 protection to meet the objections of the legislative
 5 rule-making review committee and refiled in the state
 6 register on the twenty-third day of November, one thou-
 7 sand nine hundred ninety-four, relating to the division of
 8 environmental protection (requirements for determining
 9 conformity of general federal actions to applicable air
 10 quality implementation plans (general conformity), 45
 11 CSR 35), are authorized.

45-34 12 (b) The legislative rules filed in the state register on
 13 the twelfth day of August, one thousand nine hundred
 14 ninety-four, modified by the division of environmental
 15 protection to meet the objections of the legislative
 16 rule-making review committee and refiled in the state
 17 register on the twenty-third day of November, one thou-
 18 sand nine hundred ninety-four, relating to the division of
 19 environmental protection (emission standards for hazard-
 20 ous air pollutants pursuant to 40 CFR Part 63, 45 CSR 34),
 21 are authorized.

45-11 22 (c) The legislative rules filed in the state register on the
 23 twelfth day of August, one thousand nine hundred
 Amend. 24 ninety-four, modified by the division of environmental
 25 protection to meet the objections of the legislative
 26 rule-making review committee and refiled in the state
 27 register on the twenty-third day of November, one thou-
 28 sand nine hundred ninety-four, relating to the division of
 29 environmental protection (standards of performance for
 30 new stationary sources, 45 CSR 16), are authorized with
 31 the amendment set forth below:

32 "On page two, section 4, subsection 4.1, subdivision
 33 4.1.i, by striking out 'Part 60.195(b)' and inserting in lieu
 34 thereof 'Part 60.194(d)';

35 On page two, section 4, subsection 4.1., subdivision

36 4.l.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
37 in lieu thereof 'Part 60.335(f)(1)';

38 And,

39 On page two, section 4, after subdivision 'k', by insert-
40 ing a new subdivision to read as follows:

41 'l. Part 60.335(f)(1).' "

45-14

42 (d) The legislative rules filed in the state register on
43 the fifteenth day of August, one thousand nine hundred
44 ninety-four, modified by the division of environmental
45 protection to meet the objections of the legislative
46 rule-making review committee and refiled in the state
47 register on the nineteenth day of December, one thousand
48 nine hundred ninety-four, relating to the division of envi-
49 ronmental protection (permits for construction and major
50 modification of major stationary sources of air pollution
51 for the prevention of significant deterioration, 45 CSR 14),
52 are authorized.

45-36

53 (e) The legislative rules filed in the state register on the
54 twelfth day of August, one thousand nine hundred
55 ninety-four, modified by the division of environmental
56 protection to meet the objections of the legislative
57 rule-making review committee and refiled in the state
58 register on the twenty-third day of November, one thou-
59 sand nine hundred ninety-four, relating to the division of
60 environmental protection (requirements for determining
61 conformity of transportation plans, programs and projects
62 developed, funded or approved under title 23 U.S.C. or
63 the federal transit act, to applicable air quality implemen-
64 tation plans, 45 CSR 36), are authorized.

45-5

65 (f) The legislative rules filed in the state register on the
66 twelfth day of August, one thousand nine hundred
67 ninety-four, modified by the division of environmental
68 protection to meet the objections of the legislative
69 rule-making review committee and refiled in the state
70 register on the twenty-ninth day of December, one thou-

45CSR16

FILED

Nov 23 9 15 AM '94

TITLE 45
LEGISLATIVE RULES
~~WEST-VIRGINIA-AIR-POLLUTION-CONTROL-COMMISSION~~
BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 16
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

§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 the federal Clean Air Act, as amended, regulating the construction or modification of new stationary sources. It is the intent of the Commission Director to adopt these standards by reference. It is also the intent of the Commission Director to adopt associated reference methods, performance specifications and other test methods which are appended to such standards.

1.2. Authority -- W. Va. Code ~~§16-20-5~~ §§22-5-1 et seq.

1.3. Filing Date -- ~~August 13, 1993.~~

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

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.

§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 regulation 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 May 1, 1993 July 1, 1994, and contained in 40 CFR Part 60 are hereby adopted in their entirety and incorporated herein by reference, except as follows:

a. Part 60.9 is amended to provide that information shall be available to the public in accordance with W. Va. Code ~~16-20-1;~~ §§22-5-1 et seq., W. Va. Code 29B-1-1; et seq., and 45CSR31.

- b. Sub-parts B, C, Ca, Cb and Ea of 40 CFR 60 shall be excluded.

§45-16-4. Chief Director.

4.1. Any and all references in said 40 CFR 60 to the "Administrator" is amended to be the "Chief Director" of the ~~Office of Air Quality 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":

- a. Part 60.2.
- b. Part 60.4.
- c. Part 60.8(b)(2).
- d. Part 60.8(b)(3).
- 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.
- f. Part 60.11(e).
- g. Part 60.13(c).
- h. part 60.45(a).
- i. Part 60.195(b).
- j. Part 60.332(a).
- k. Part 60.335(a)(1)(i).

§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 Regulations Rules.

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

45-16

Bill-DEP, New Stationary

2512

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H. B. 2152

(By Delegates Gallagher, Douglas, Compton,

Linch, Faircloth and Riggs.)

(Introduced January 23, 1995; referred to the

Committee on the Judiciary.)

10 A BILL to amend chapter sixty-four of the code of West Virginia,
11 one thousand nine hundred thirty-one, as amended, by adding
12 thereto a new article, designated article three-b, relating
13 to authorizing the division of environmental protection to
14 promulgate legislative rules relating to standards of
15 performance for new stationary sources.

16 Be it enacted by the Legislature of West Virginia:

17 That chapter sixty-four of the code of West Virginia, one
18 thousand nine hundred thirty-one, as amended, be amended by
19 adding thereto a new article, designated article three-b, to read
20 as follows:

21 ARTICLE 3B. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO
22 PROMULGATE LEGISLATIVE RULES.

23 §64-3B-1. Division of environmental protection.

1 The legislative rules filed in the state register on the
2 twelfth day of August, one thousand nine hundred ninety-four,
3 modified by the division of environmental protection to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the twenty-third day of
6 November, one thousand nine hundred ninety-four, relating to the
7 division of environmental protection (standards of performance
8 for new stationary sources), are authorized.

9

10 NOTE: The purpose of this bill is to authorize the Division
11 of Environmental Protection to promulgate legislative rules
12 relating to standards of performance for new stationary sources.

13

14 This section is new; therefore, strike-throughs and
15 underscoring have been omitted.

SENATE BILL NO. ____67

(By Senators Anderson, Boley, Grubb and Macnaughtan)

[Introduced January 20, 1995; referred to the
Committee on Natural Resources; then to the
Committee on Finance; and then to the Committee
on the Judiciary]

45-16

8

9

10 A BILL to amend chapter sixty-four of the code of West Virginia,
11 one thousand nine hundred thirty-one, as amended, by adding
12 thereto a new article, designated article three-b, relating
13 to authorizing the division of environmental protection to
14 promulgate legislative rules relating to standards of
15 performance for new stationary sources.

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

17 That chapter sixty-four of the code of West Virginia, one
18 thousand nine hundred thirty-one, as amended, be amended by
19 adding thereto a new article, designated article three-b, to read
20 as follows:

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

23 **§64-3B-1. Division of environmental protection.**

1 The legislative rules filed in the state register on the
2 twelfth day of August, one thousand nine hundred ninety-four,
3 modified by the division of environmental protection to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the twenty-third day of
6 November, one thousand nine hundred ninety-four, relating to the
7 division of environmental protection (standards of performance
8 for new stationary sources), are authorized.

9

10 NOTE: The purpose of this bill is to authorize the Division
11 of Environmental Protection to promulgate legislative rules
12 relating to standards of performance for new stationary sources.

13

14 This section is new; therefore, strike-throughs and
15 underscoring have been omitted.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

March 29, 1995

Tammy Mowrer
DEP-Air Quality
1558 Washington St. E.
Charleston, WV 25311

HB 2134 authorizing, **Title 45, Series 16, Standards of performance for new stationary sources**, passed the Legislature on **March 10, 1995**. It is was signed by the Governor on March 24, 1995.

You have sixty (60) days after the Governor signs HB 2134, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 2134** section **64-3-1(c)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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WV DIV OF ENVIR. PROTECT.
OFFICE OF AIR QUALITY

1995 OCT 17 P 1:07

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

TO: Tammy Mowrer

AGENCY: DEP-Air Quality

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 13, 1995

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 16 TITLE: 45 DEP-Air Quality

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____
TITLE OF PERSON SIGNING: _____
DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Tammy S. Mowrer
TITLE OF PERSON SIGNING: Administrative Secretary
DATE: November 20, 1995

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
NOV 27 2 53 PM '95
FILED



BUREAU OF ENVIRONMENT
10 McJUNKIN ROAD
NITRO, WV 25143-2506

GASTON CAPERTON
GOVERNOR

DAVID C. CALLAGHAN
COMMISSIONER

April 26, 1995

Ms. Judy Cooper
Director, Administrative Law Division
Secretary of State's Office
Building 1, Suite 157K
Charleston, West Virginia 25305

RE: 45 CSR 16 - Standards of Performance -
New Stationary Sources

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned rule as a final filing and adoption of a legislative rule authorized by the West Virginia Legislature.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Roger T. Hall at 759-0515.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "D. Callaghan", written over the typed name.

David C. Callaghan
Commissioner
Bureau of Environment

DCC;RTH:cc

Attachment