



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526



West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

May 17, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

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

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of Final Filing and Adoption of a Legislative Rule."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: Karen Watson
Carrie Chambers

**LEGISLATIVE HISTORY ABSTRACT
45CSR16**

**Standards of Performance for New Stationary Sources
Pursuant to 40 CFR Part 60**

Bureau of Environment
Division of Environmental Protection
Office of Air Quality
House Bill 4223 Section 64-3-1(d)

6/16/99 Filed Notice of Public Hearing with Secretary of State.

6/16/99 Initial Filing with Legislative Rule-Making Review Committee.

7/14/99 Filed Notice of Extension of Public Comment Period.

7/19/99 Held Public Hearing.

7/28/99 End of Public Comment Period.

8/5/99 Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.

8/15/99 Rule Approved by Legislative Rule-Making Review Committee.

3/11/00 Passed the West Virginia Legislature.

4/3/00 Signed by the Governor.

5/19/00 Rule Final Filed with Secretary of State.

6/1/00 Effective Date of Rule.

FILED

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

MAY 19 9 35 AM '00

OFFICE OF WEST VIRGINIA
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 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 19, 2000

1.4. Effective Date. -- June 1, 2000

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, 1998, as amended by the Federal Register through June 1, 1999.

1.6. Former Rules. -- This legislative rule amends 45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60" which was filed May 20, 1999, and which became effective June 1, 1999.

§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. -- 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, 1998, as amended by the Federal Register through June 1, 1999, 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 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 are amended to be the "Director" of the West Virginia Division of Environmental Protection except as follows:

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

4.1.b. where provisions occur which refer to: method or rule.

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. waivers/adjustments to recordkeeping and reporting;

4.1.b.7. emissions averaging;

4.1.b.8. applicability 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. where the context of the regulation clearly requires otherwise.

§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,