

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

FORM #2

Do Not Mark In This Box

FILED

JUL 14 4 15 PM '99

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--  
NOTICE OF EXTENSION OF COMMENT PERIOD

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

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 17

TITLE OF RULE BEING AMENDED: "To Prevent and Control Particulate Matter Air  
Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive  
Particulate Matter"

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

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

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY  
INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT  
PERIOD WILL END ON July 28, 1999 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING  
ADDRESS.

Edward L. Kropp, Chief

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

THE ISSUES TO BE HEARD SHALL BE  
LIMITED TO THIS PROPOSED RULE.

Edward L. Kropp/Karen M. Watson

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED





Executive Office  
10 McJunkin Road  
Nitro, West Virginia 25143-2506  
Telephone: 304-759-0515  
Fax: 304-759-0526

## West Virginia Bureau of Environment

Cecil H. Underwood  
Governor

Michael P. Miano  
Commissioner

June 14, 1999

Ms. Judy Cooper  
Director, Administrative Law Division  
Office of the Secretary of State  
Capitol Complex  
Charleston, West Virginia 25305

RE: 45CSR17 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office as "Notice of Public Hearing/Comment Period."

If you should have questions or require additional information, please contact Carrie Chambers in my office at 759-0515. Your cooperation in this regard is very much appreciated.

Sincerely yours,

  
Michael P. Miano  
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp  
Karen Watson  
Carrie Chambers

**BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

**RULE TITLE:**        45CSR17 - "To Prevent and Control Particulate Matter Air Pollution from  
Materials Handling, Preparation, Storage and Other Sources of Fugitive  
Particulate Matter"

**A.    AUTHORITY:** W.Va. Code §§22-5-1 et seq.

**B.    SUMMARY OF RULE:**

45CSR17 "To Prevent and Control Particulate Air Pollution from Materials Handling, Preparation, Storage and Sources of Fugitive Particulate Matter" (effective date May 1, 1979) seeks to control emissions from fugitive sources that have no other applicable control requirements in a limited number of geographical areas within the State.

The revisions contained herein are intended to extend the applicability of this rule to the entire state for prevention and control of fugitive particulate emissions. The rule revisions will provide the Office of Air Quality with needed enforcement capability when dealing with nuisance fugitive particulate emissions that result in citizen complaints.

**C.    STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

The purpose of 45CSR17 is to prevent and control particulate matter air pollution from materials handling, preparation and other sources of fugitive emissions. The revisions proposed herein were initiated by the Office of Air Quality as part of a broad effort to modernize and streamline all the Office rules. The current revision process is also intended to update and harmonize this rule with other rules of the Office of Air Quality. The proposed revisions are the result of a thorough review in a stakeholder process that was inclusive of the Office of Air Quality, representatives of the regulated community, concerned citizens and the environmental community.

**D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:**

There is no federal counterpart regulation; therefore, a determination of stringency is not required.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with §22-1A-1 and 3(c,) the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

At their June 10, 1999 meeting, the Environmental Advisory Council reviewed and discussed this rule - there were no substantive changes as a result of their discussion. (See attached minutes of that meeting.)

## MINUTES

### ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

June 10, 1999, Director's Conference Room, Nitro

The sixteenth meeting of the DEP Advisory Council was held Thursday, June 10, 1999, in the Director's Conference Room located in Nitro. Chairman Mike Miano called the meeting to order at 10:00 a.m.

#### ATTENDING:

##### Advisory Council Members:

Mike Miano, Chairman  
Jacqueline Hallinan  
William Raney  
Rick Roberts  
William Samples

##### Environmental Protection:

Bill Adams	Pam Nixon
Andy Gallagher	Rocky Parsons
Tony Grbac	Cap Smith
Randy Huffman	Charlie Sturey
Mike Johnson	Barbara Taylor
Mike Lewis	Karen Watson
Robert Keatley	Mike Zeto

1) Review and Approval of March 22, 1999 Minutes. Chairman Miano called the meeting to order at 10:00 a.m. The first item on the agenda was approval of the minutes of the March 22 Advisory Council; they were approved as written.

2) Discussion of Proposed Rule Amendments - 2000 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's new rule-making procedure that was implemented by Director Miano in September 1998 to involve the Advisory Council in DEP's rule-making process as early as possible to enable the Council to review, comment, and make recommendations to the Director on DEP's proposed legislative rule changes before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

Chairman Miano said he would like to begin by saying he hoped all Council members had received their draft rules by E-mail without any complications and they were able to review them before the meeting. He informed the Council that due to the large number of rules being proposed for the 2000 Legislative Session, DEP's program offices would review them with the

Council as thoroughly as possible, in the allotted time frame, and try to answer any questions or concerns the Council may have.

The following Office of Air Quality's proposed rule amendments were discussed by Karen Watson, OAQ, with assistance from Richard Keatley, also from the OAQ office:

- **45CSR1 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COAL REFUSE DISPOSAL AREAS"**
- **45CSR2 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM COMBUSTION OF FUEL IN INDIRECT HEAT EXCHANGERS"**
- **45CSR3 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF HOT MIX ASPHALT PLANTS"**
- **45CSR4 - "TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS"**
- **45CSR5 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS"**
- **45CSR6 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE"**
- **45CSR7 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MANUFACTURING PROCESSES AND ASSOCIATED OPERATIONS"**
- **45CSR10 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE EMISSION OF SULFUR OXIDES"**
- **45CSR12 - "AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE"**
- **45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"**
- **45CSR17 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER"**
- **45CSR18 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM DIRECT MEAT-FIRING DEVICES"**
- **45CSR23 - "TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS"**
- **45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES"**
- **45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"**
- **45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"**

Karen began by bringing the Council up to date on the status of two OAQ rules that were filed during the last session (or late in the session). 45CSR8 revised the ambient air quality for sulfur oxides and particulate matter, and 45CSR9 pertained to ambient air quality standards for carbon monoxide and ozone. The DC Circuit Court of Appeals has ordered EPA to show how they arrived at the new standards - EPA may go back to the previous standards. Karen also apprised the Council on the N<sub>ox</sub> State Implementation Plan. The Circuit Court stayed the implementation of that rule and there are no plans to develop any other amendments in the

immediate future. 45CSR28, which is the emissions trading rule that was filed late in the 1999 Session, was not taken up by the Legislature, but plans are to put the rule on the July agenda of the Interim Legislative Committee.

Karen explained the reason for the unusually large number of DEP rules that are being filed for the next Legislative Session. She informed the Council that several of the rules were outdated and were amended for consistency and streamlining, and are a result of months of on-going meetings with stakeholders -- involving both the regulated community and citizens. A particulate matter and sulfur oxide work group was also involved. Those rule amendments as a result of the stakeholders process include: 45CSR1 (which is being repealed and replaced with language in 45CSR5), 45CSR2, 3, 4, 5, 6, 7, 10, 12, 17, and 18 (which is being repealed since the rule is no longer deemed necessary). The amendments to the remainder of the rules, 45CSR16, 23, 25, 33, and 34 were necessary to adopt by reference definitions, clarifications, technical amendments, etc., recently adopted by US EPA.

After several minutes of discussion, the Advisory Council recommended to the Director that the following amendments be made to the OAQ rules:

***Mr. Samples pointed out that 45CSR2 and 45CSR7 contain different definitions for the term "opacity." The agency responded that this discrepancy was inadvertent and the language should be as it is in 45CSR2. The agency agreed to revise 45CSR7, subsection 2.23, accordingly.***

***Mr. Larry Harris was unable to attend the meeting; however, he expressed the following comments on 45CSR10 and 45CSR33 by e-mail. He stated that the State's rules should be more stringent than the federal counterpart regulations, since the State's streams are being adversely impacted. The agency responded that, at this point in time, it does not possess sufficient evidence to make the written finding that is required by WV Code §22-2-3a before promulgating a rule which is more stringent than a counterpart federal regulation.***

Cap Smith and Mike Zeto discussed the following Office of Waste Management proposed rule amendments:

- 33CSR2 - "Sewage Sludge Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"

Mike Zeto briefed the Council on the proposed amendments to 33CSR2. He stated that in 1996 the Legislature mandated DEP to perform a study on soil limitations for sewage sludge land application sites. These amendments (as a result of the study) were to be proposed by June 30, 1999. Other amendments to the rule include specifying the analytical method used for soil analysis, placing conditions on variances from the soil limits for land application sites, providing an incentive for municipalities to produce higher quality compost products, and adjusting the sewage sludge limits for four metals. Mr. Zeto told the Council these amendments are being proposed to update other related areas of the rule in an attempt to provide better management of sewage sludge within the state.

Cap Smith discussed 33CSR20 with the Council. He informed the Council that amendments are proposed in section 2 of the rule that will allow the Office of Waste Management to delist hazardous wastes, which has previously been handled by EPA. The other significant amendments that are being proposed by adoption of the Federal Register pertain to revision standards for owners and operators of closed and closing hazardous waste management facilities, post closure permit requirements, and the closure process. These amendments are referenced throughout the rule and will hopefully expedite site cleanup while maintaining environmental protection.

***There were several minutes of discussion on OWM's proposed rule amendments; however, no recommendations were made to the Director concerning the amendments.***

Mike Lewis, Office of Oil and Gas, discussed the following new proposed rule:

- **35CSR7 - "Well Operations - Within and Around Gas Storage Reservoirs"**

Mike informed the Council that 35CSR7 is a proposed "new" rule for the O&G Office. The rule is needed to provide protection of the environment, the public, and the state's natural gas resources. It is the intent of the proposed rule to accomplish this by addressing certain operating procedures that oil and gas and gas storage operators are to use when drilling into or through a gas storage reservoir or the gas storage reservoir protective area. In order to assure absence of leaking gas, the proposed rule requires gas storage operators to conduct monitoring and inspections of gas storage wells.

***There were no questions or discussion by the Council on this proposed rule.***

The following proposed rules were discussed by the Office of Mining and Reclamation:

- **38CSR2 - "Surface Mining and Reclamation Rule"**
- **38CSR2A - "Rules for Mining and Restoration for Sandstone, Limestone, and Sand"**
- **38CSR2B - "RULES FOR MINING AND RECLAMATION OF MINERALS OTHER THAN COAL"**

Ed Griffith, Office of Surface Mining, discussed the proposed amendments to the Surface Mining and Reclamation Rule. Ed told the Council that there are only minor amendments being proposed to this year's rule. The proposed definition of "woodlands" in subsection 2.136 relates to the utilization of commercial woodlands in Approximate Original Contour variance areas. This change is being proposed in order for the state to meet the federal policy that is expected to change in July 1999. The proposed amendment to change the bonding requirements of mining operations that request variances from contemporaneous reclamation to the maximum amount per acre bond (\$5,000 per acre) is found in subdivision 14.15.f. All other amendments are being proposed in order to meet the requirements of the Office of Surface Mining's program amendments.

Rocky Parsons, OMR's Philippi Office, next addressed OMR's proposed rules 38CSR2A and 2B. Rocky explained to the Council members that 38CSR2B has been in place since 1983 and regulates all minerals other than coal. However, in accordance with the requirement that separate rules for limestone, sandstone, and sand are to be promulgated, DEP is proposing

38CSR2A which will regulate only those minerals - 38CSR2B will regulate all minerals other than limestone, sandstone, sand, and coal. Both proposed rules will regulate roads, blasting, drainage control, methods of operation, excess spoil disposal, revegetation, mapping, transfer of permits, permit renewals, revisions and incidental boundary revisions. 38CSR2A will provide provisions for restoration and 38CSR2B will include provisions for reclamation. Rocky gave the Council a brief history on the roadblocks the agency has encountered in the past several years in their attempt to amend the quarry statute. He said since the agency has been unsuccessful in that approach, it has become necessary to try to accomplish this through rule making. He informed the Council of a public meeting held the previous week to discuss the two proposed rules. He said the meeting was well attended and he believes the rules were well received by everyone in attendance.

***The three OMR proposed rules were discussed by the Council members. Bill Raney said that although Rocky stated that the quarry rules have been well received by industry and the citizens, he is concerned about whether there has been enough time for the review of the proposed rules after they were drafted. He believes there would be a smoother transition into the rule making process, i.e., the public hearing/comment period, etc., if there had been more involvement from outside DEP during the drafting of the rules.***

***Mr. Larry Harris commented by e-mail 38CSR2A and 2B. His question is whether the siltation measures include silt fences where runoff might enter streams. He said it is not apparent what best management practices are for this situation, and he wonders if it needs to be spelled out. He knows of some operations in quarries where streams muddy after rainfalls, such as the Elkins and Waco quarries near Snowshoe, and he feels this is harming the streams. Do the new rules address this?***

***Rocky Parsons responded by saying that design criteria for drainage control structures is found in the technical handbook. Silt fences are not adequate for sediment control. The drainage system must be designed to hold .125 ac/ft of sediment for each acre of disturbed land. All runoff must pass through a drainage control structure. There is a provision for less sediment control (1/2 factor) for certain circumstances as approved by the Director. Effluent limits as established in the NPDES permit must be met.***

Tony Grbac, Office of Surface Mining, addressed the following rule:

**199CSR1 - "SURFACE MINING BLASTING RULE"**

Tony began by briefing the Council on the history of the Surface Mining Blasting Rule. This rule is being proposed to comply with SB681 - passed during the last session. This bill created the Office of Explosives and Blasting and the Office of Coalfield Community Development, which is under the West Virginia Development Office. The proposed rule will regulate blasting laws and rules associated with all surface-mining operations. All duties currently performed by OMR related to blasting, and all rules which now regulate blasting (38CSR2C) will be transferred to this new office. Besides regulating blasting on all surface mining operations, it will also implement and oversee pre-blast survey processes; maintain and operate a system to receive and address questions, concerns and complaints relating to mining

operations; determine the qualifications for individuals and firms performing pre-blast surveys; establish the education, training, examination and certification of blasters; administer a claims process for property damage caused by blasting; and conduct a study of blasting and make recommendations regarding any appropriate rule or code changes.

Tony explained that the revenue generated by the proposed fee in 199CSR1 (one-half cent times the number of pounds of explosive material used during the preceding month for any purpose on the surface mining operations) would fund both the offices, as required by SB681. After one year of collection, both offices are to report to the Legislature as to whether the revenue collected is sufficient to operate both offices.

***After several minutes of discussion between DEP and the Council members, Bill Raney expressed his concern in filing the rule for public hearing in the specified time frame. Mr. Raney asked if anyone outside DEP has been involved in drafting the rule. OMR answered by saying the rule was drafted by several staff within OMR. Mr. Raney replied that he believes there will be serious concerns with this rule once industry has had an opportunity to review it. He believes the rule drafting process definitely needs input from firms and individuals outside DEP, and he thinks the process will go smoother once everyone has had the opportunity to address their concerns. Mr. Raney recommended that the Director withhold this rule from the list of rules DEP proposes to file for public hearing/comment period in the coming week to give all interested parties a chance to participate in drafting the rule.***

***After discussion of this recommendation, Chairman Miano said he believes the best approach would be to continue with the filing of the proposed rule for public hearing, start the rule in the normal process and time frame, and in the meantime he would commit to putting together a work group of interested parties to discuss the rule. If DEP feels that more time is needed once the group begins their work on the rule, he will consider the possibility of either extending the comment period or filing for another public hearing. He said he will also decide in the near future whether DEP will file the rule as an "Emergency Rule" since HB 681 will become effective on June 11.***

***Council members also pointed out a typographical error in subdivision 3.9.a.3. of the rule relating to cross-references that will be corrected by DEP.***

Barb Taylor and Mike Johnson, Office of Water Resources, briefed Council on the following rules:

- 47CSR57A - "Groundwater Protection Standards at Steam Electric Generating Facilities"
- 47CSR26 - "Water Pollution Control Permit Fee Schedule"
- 47CSR31 - "State Water Pollution Control Revolving Fund Program Rule"

Barb described the proposed "new" rule relating to Groundwater Protection Standards at Steam Electric Generating Facilities. She noted that the rule is a result of a Notice of Intent filed on October 24, 1994, by the West Virginia Steam Electric Generation Industry, with the Director of DEP, in accordance with 47CSR57 to apply for a class variance for all West Virginia power stations and associated disposal sites. At that time, DEP provided AEP and AP with the

opportunity to conduct a four-year study to gather the necessary data to support their variance request. The objectives were met by assembling and reviewing data, estimating potential impacts to receptors, and performing an economic assessment impact analysis to the industry, commercial enterprises, and citizens at large if compliance with the Groundwater Protection Act were required without benefit of the variances. After review of the four-year study, the Director determined that granting this request for a variance at these locations would not pose adverse effects to human health or the environment. There are no human or environmental sensitive receptors between the coal storage areas or as ponds; therefore, it is unlikely there will be adverse effects. Barb gave each member a copy of the four-year study on which the Director made his determination.

Chairman Miano told Council that DEP is definitely willing to look at such cases where extensive research and study have been done by the regulated community to back up their findings before granting such variances, and believes DEP will see more studies like this in the future.

Barb next apprised the members on the proposed amendments of the Water Pollution Control Permit Fee Schedule. She stated that amendments are being proposed as a result of HB 2684, passed March 11, 1999, and effective ninety days from passage. The Director is required to implement an emergency rule to implement the fee schedule authorized by the amendments by July 1, 1999. This rule was filed as an "Emergency Rule" on June 7, 1999.

Mike Johnson, Office of Water Resources' Construction Assistance Office, briefed the Council on 47CSR31 - the Water Pollution Control Revolving Fund Program rule. The amendments to this rule are being proposed to allow the State Revolving Fund low interest terms to be extended from 20 years to 30 years for communities that qualify as "disadvantaged." There is only one other state in the country to receive such approval from EPA. Mike informed the Council that he was only recently made aware of this extension by EPA to extend the low interest loans from 20 to 30 years while attending a meeting out of state. This rule was filed as an "Emergency Rule" on May 24, 1999.

***Council members unanimously agreed that Mike Johnson should be commended for gathering this information and proposing the amendment to the rule that will enable disadvantaged communities to immediately take steps toward constructing watershed projects that will provide affordable monthly sewer rates.***

Open Discussion:

Chairman Miano and Council members expressed their compliments to the program offices for all their hard work, especially with the stakeholders process -- it is obvious a lot of hard work has gone into the process in order to make their efforts more productive.

Bill Raney asked a question relating to the "More or Less" Stringency statement that appears on the front of some DEP rules, but not on others, and voiced his concern if DEP is paying close attention to this, or if the same statement is appearing with all proposed rules. Carrie Chambers from the Director's Office explained that statement was once required to be included in the "General" section of each rule; however, it is now placed in the briefing document that is attached to each rule, and required by the Secretary of State's Office and the

Legislative Rule-Making Review Committee, before it is filed. She went on to explain that with the rush to get draft copies of the rules to Council members as soon as possible, some of the Briefing Documents had not been completed, but would be attached to all DEP rules before they are filed for public hearing. Chairman Miano went on to say it is his belief that all program offices are carefully scrutinizing each rule before that decision is made.

Chairman Miano thanked Council for taking time from their busy schedules to review the extensive list of DEP's proposed rules. He informed the Council that the minutes would be left open for comment until Wednesday, June 16, at which time the minutes will be attached to the rules and filed with the Secretary of State's Office and the Legislative Rule-Making Review Committee for notice of public hearing/comment period.

Before adjourning the meeting, the Council informed Chairman Miano that they would prefer beginning future meetings at 10:00 a.m., instead of the usual time of 1:00 p.m. The meeting was then adjourned at 3:30 p.m.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 45CSR17 - "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East  
Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates: The revisions proposed to 45CSR17 will have a negligible effect on the costs to the Office of Air Quality for continued implementation of this rule. Costs are covered under previous budget estimates.
  
3. Objectives of these rules: The objective of this rule, as revised, is to prevent and control particulate matter air pollution from materials handling operations and other sources of fugitive emissions. The revisions to this rule will provide state-wide applicability to sources that have no other requirement to control emissions of particulate matter.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

The revisions proposed to rule 45CSR17 will have minimal impact for industrial sources. Such sources are generally subject to other rules of the Office of Air Quality regulating the emissions of particulate matter. Some unregulated sources which are not subject to other rules may be required to minimize emissions of fugitive dust by this rule revision.

C. Economic Impact on Citizens/Public at Large.

The revisions proposed may affect some of the public at large who in the past have had no specific applicable requirements to minimize emission of fugitive dust.

Date: 6/11/99

Signature of Agency Head or Authorized Representative

Karen G. Watson  
Karen G. Watson, Attorney

FILED

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

Jun 16 9 33 AM '99

OFFICE OF THE ATTORNEY GENERAL  
SECRETARY OF STATE

SERIES 17  
**TO PREVENT AND CONTROL PARTICULATE MATTER  
AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE  
AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER**

**§45-17-1. General.**

1.1. Scope. -- The purpose of ~~Series 17 this rule~~ is to prevent and control particulate matter air pollution from materials handling, preparation, storage; and other sources of fugitive particulate matter. ~~and shall apply to the County of Kanawha; and the Magisterial Districts of Valley (Fayette County); Scott and Pocatalico (Putnam County); Tygart (Wood County); the City of Fairmont and those portions of Union and Winfield Magisterial Districts west of Interstate I-79 (Marion County).~~

To insure the attainment and maintenance of West Virginia's ambient air quality standards, it is the intent of the Director to evaluate sources of fugitive particulate matter and to prevent such sources from jeopardizing the attainment or maintenance of these standards by requiring the application of the best control methods or technology practicable.

1.2. The Director particularly urges the cooperation of municipalities in utilizing street sweepers equipped with dust capturing equipment, on a regular basis, to minimize particulate matter reentrainment into the air from heavily trafficked streets. In addition, municipalities should take such action as necessary to control fugitive particulate matter emissions arising from unpaved streets, access roads, private parking lots; and any other such sources of uncontrolled particulate matter.

It is the intent of the Director that fugitive particulate matter sources be controlled in a timely and progressive manner, so that all such sources are in compliance with this rule as soon as possible, but not later than December 31, 1982.

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

1.3.4. Filing Date. -- ~~March 30, 1979;~~

1.4.5. Effective Date. -- ~~May 1, 1979;~~

1.6. Former Rules. -- This legislative rule amends 45CSR17 "To Prevent and Control Particulate Air Pollution from Materials Handling, Preparation, Storage and Sources of Fugitive Particulate Matter" which was filed on March 30, 1979, and which became effective May 1, 1979.

**§45-17-2. Area Affected.**

~~—The County of Kanawha; and the Magisterial Districts of Valley (Fayette County); Scott and Pocatalico (Putnam County); Tygart (Wood County); the City of Fairmont and those portions of Union and Winfield Magisterial Districts west of Interstate I-79 (Marion County).~~

**§45-17-32. Definitions.**

32.1. "Air Pollution", 'statutory air pollution', shall have the meaning ascribed to it in W. Va. Code §22-5-2.

3.2. ~~—~~ [RESERVED]

3.32.2. "Director" means the ~~D~~director of the ~~West Virginia~~ ~~D~~division of ~~E~~environmental ~~P~~protection or such other person to whom the ~~D~~director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

3.102.3. "Fugitive Particulate Matter", for the purpose of this rule, means particulate matter which becomes airborne from activities ~~associated~~

~~with the transporting of materials, disposal areas, haul roads, plant grounds, public, private, and industrial parking areas or lots, public and private streets and highways, mobile drills, construction and demolition and similar activities, including, but not limited to: handling, transporting or storage of materials; storage structure(s); the use, repair, construction, alteration, renovation or demolition of building(s), road(s) or other activities; disposal areas; haul roads; plant grounds; public, private and industrial parking areas or lots; public and private streets and highways; mobile drills; and any other activity which generates airborne particulate matter.~~

~~3-11-2.4.~~ "Materials" includes, but is not limited to, limestone, dolomite, iron ore, slag, coke, coal, sandstone, magnetite, sinter, sand, coal refuse, soda ash, ash, cement or earth.

~~3-62-5.~~ "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

~~3-52-6.~~ "Particulate Matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid.

~~3-4-2.7.~~ "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership; or association of whatever nature.

2.8. "Statutory Air Pollution" means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

~~3.7.~~ "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution:

~~3.8.~~ "Air Pollution Control Equipment" means any equipment used for collecting, converting or

suppressing particulate matter for the purpose of preventing or reducing discharge of such particulate matter into the open air.

~~3.9.~~ "Materials Handling and Preparation Activity" shall include, but not be limited to, the crushing, grinding, breaking, conveying, loading, unloading, transferring and classifying of materials:

~~3.12.~~ "Disposal Area" means any area where waste material is deposited for disposal. Such waste material shall include, but not be limited to, coal refuse, ash, material collected by air pollution control equipment, process overload discharges, building demolition wastes, contaminated products and materials:

~~2.9.~~ Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W. Va. Code §22-5-1 et seq.

~~§45-17-4. Control and Prohibition of Particulate Emissions From Materials Handling, Preparation and Storage.~~

~~4.1.~~ No person shall cause, suffer, allow, or permit the discharge or particulate matter from any materials handling and/or preparation activity in excess of ten percent (10%) opacity averaged over a six (6) minute period.

~~4.2.~~ No person shall cause, suffer, allow or permit the sustained discharge of particulate matter into the open air in such a manner as to be visible from any inactive storage pile:

~~Control measures that should be utilized in the storage of materials include, but are not limited to; the use of wetting and surface bonding agents; partial or total enclosures or draping of material on storage piles, or storage of materials in silos or bins with air pollution control equipment installed to prevent particulate emissions that are displaced by air during loading and/or unloading operations:~~

~~4.3.~~ Where any air pollution control equipment or fugitive particulate matter suppression system utilizes water in its operation, such equipment shall be designed for all-weather

use:

**~~§45-17-5. Control of Particulate Emissions From Disposal Areas.~~**

~~No person shall cause, suffer, allow or permit the sustained air entrainment of particulate matter from a disposal area, except at such portions of the disposal area where depositing and/or loading out activity takes place. Good practice must be utilized to disturb only the smallest part of a disposal area possible for such activities. Section 4.1. of this rule shall apply to materials deposition and/or loading out activities.~~

**~~§45-17-6. Control of Fugitive Particulate Matter Emissions From Roads, Haul Ways and Parking Lots:~~**

~~As determined by the Director, a person may be required to minimize particulate matter air entrainment from vehicle activity or natural wind effects on haul ways, haul roads, parking lots and other surfaces:~~

**~~§45-17-7. Control and Prohibition of Fugitive Particulate Matter Emissions From Vehicles:~~**

~~No person shall cause, suffer, allow or permit a vehicle to be driven or moved on any public or private street, road, alley, highway or other thoroughfare unless such vehicle is so constructed or its cargo treated in such a manner as to prevent its contents from dripping, sifting, leaking or otherwise escaping therefrom, so as not to create conditions which result in particulate matter becoming airborne.~~

**~~§45-17-8. Control and Prohibition of Fugitive Dust Emissions From Construction or Demolition Activities:~~**

~~No person shall cause, suffer, allow or permit the sustained escape of particulate matter into the open air from any construction, demolition site or abrasive cleaning operation that, in the judgement of the Director, will have an adverse effect on the ambient air quality. Such control measures as necessary shall be applied to prevent fugitive particulate matter emissions from such sources. Control measures may include adequate~~

~~containment methods for abrasive cleaning operations, liquid treatment of haul roads and other surfaces, covering of material transport vehicles, the prompt removal of tracked material from roads or streets or other control measures specified by the Director.~~

**§45-17-3. Control and Prohibition of Fugitive Particulate Emissions.**

3.1. No person shall cause, suffer, allow or permit fugitive particulate matter to be discharged beyond the boundary lines of the property on which the discharge originates or at any public or residential location, which causes or contributes to statutory air pollution.

3.2. When a person is found in violation of this rule, the Director may require the person to utilize a system to minimize fugitive particulate matter. This system to minimize fugitive particulate matter may include, but is not limited to, the following:

3.2.a. Use, where practicable, of water or chemicals for control of particulate matter in demolition of existing buildings or structures, construction operations, grading of roads or the clearing of land;

3.2.b. Application of asphalt, water or suitable chemicals on unpaved roads, material stockpiles and other surfaces which can create airborne particulate matter;

3.2.c. Covering of material transport vehicles, or treatment of cargo, to prevent contents from dripping, sifting, leaking or otherwise escaping and becoming airborne, and prompt removal of tracked material from roads or streets.

3.2.d. Installation and use of hoods, fans and fabric filters to enclose and vent the handling of materials, including adequate containment methods during sandblasting, abrasive cleaning or other similar operations.

**§45-17-94. Control Programs and Schedules.**

9.1.4.1. Any person operating a facility a source of fugitive particulate matter in violation of

the provisions of this rule shall ~~present~~ submit a control program upon the request of the Director. The control program shall be embodied in a consent order as provided in W. Va. Code §22-5-4.

~~9.2. To the extent allowed by law and as requested by the Director, each municipality and county commission shall present such plans and programs as necessary to provide for the scheduled control and reduction of fugitive particulate matter by the activities regulated by this rule that are under their jurisdiction.~~

~~Such programs shall be submitted in such reasonable time as ordered by the Director and shall be progressive in nature so as to implement the earliest possible control of fugitive particulate matter into a schedule which meets the requirements of this rule.~~

~~Such schedules of compliance by that municipality or county commission shall be entered into a binding consent order between the municipality or county commission and the Director.~~

#### ~~§45-17-10. Registration and Reporting:~~

~~At such reasonable times as the Director may designate, persons owning or operating facilities involving materials handling, preparation and storage, disposal areas or other sources of fugitive particulate matter as covered by this rule, may be required to register such sources with the Director and/or furnish periodic reports concerning such activities or sources.~~

#### ~~§45-17-115. Variance~~

~~5.1. Because of temporary conditions beyond the control of any person, a variance may be granted for up to ten (10) days upon presentation of sufficient evidence to the Director from the requirements of this rule by the Director for conditions beyond the control of any person. Any request for a variance shall contain evidence satisfactory to the Director. Variances of over ten (10) days may be granted by the Director, provided a an acceptable corrective control program has been submitted by the person requesting said variance.~~

#### §45-17-6. Exemptions.

6.1. Sources that are subject to the fugitive particulate matter emission requirements of 45CSR2, 45CSR3, 45CSR5 and 45CSR7 shall be exempt from the provisions of this rule, provided that such sources shall not be exempt from the provisions of W.Va. Code §§22-5-1 et seq., including the provisions of §22-5-3 relating to statutory air pollution.

6.2. Normal agricultural activities shall be exempt from the provisions of this rule, to the extent that such activities do not cause, suffer, permit or allow statutory air pollution as defined in this rule.

#### §45-4-7. Enforcement.

7.1. Notwithstanding any other provisions in this rule, the Director may take any and all enforcement actions authorized under the Code for a violation of this rule, including, but not limited to, requiring the immediate cessation or abatement of the discharge causing or contributing to statutory air pollution.

#### §45-4-8. Inconsistency Between Rules.

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

8.2. Fugitive particulate matter emission requirements of any other applicable rule issued by the Director may be taken into consideration by the Director in determining compliance with this rule.

#### ~~§45-17-12. Conflict With Other Rules:~~

~~When a provision of this rule conflicts with similar portion(s) of any other rule previously adopted by the Director, the most stringent provision or requirement will apply.~~