

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #6

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JUN 2 3 03 PM '00

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

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

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: \_\_\_\_\_

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

AUTHORIZATION IS CITED IN (house or senate bill number) HB 4223

SECTION 64-3-1(e) , PASSED ON March 11, 2000

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: August 31, 2000



Authorized Signature



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



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## West Virginia Bureau of Environment

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Cecil H. Underwood  
Governor

Michael C. Castle  
Commissioner

June 2, 2000

Ms. Judy Cooper  
Director, Administrative Law  
Division  
Secretary of State's Office  
Capitol Complex  
Charleston, WV 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 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 45CSR17

## To Prevent and Control Particulate Matter Air Pollution From Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter

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

- 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.
- 8/6/99 Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
- 9/13/99 Rule Approved by Legislative Rule-Making Review Committee with Modifications.
- 9/24/99 Modified Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
- 3/11/00 Passed the West Virginia Legislature.
- 4/3/00 Signed by the Governor.
- 6/2/00 Rule Final Filed with Secretary of State.
- 8/31/00 Effective Date of Rule.

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

FILED

JUN 2 3 03 PM '00

OFFICE OF WEST VIRGINIA  
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 this rule is to prevent and control particulate matter air pollution from materials handling, preparation, storage and other sources of fugitive particulate matter.

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.

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

1.4. **Filing Date.** -- June 2, 2000

1.5. **Effective Date.** -- August 31, 2000

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. Definitions.**

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

2.2. "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

2.3. "Fugitive Particulate Matter", for the purpose of this rule, means particulate matter which becomes airborne from 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.

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.

2.5. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

2.6. "Particulate Matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid.

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.

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.

#### **§45-17-3. 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; or

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.

#### **§45-17-4. Control Programs and Schedules.**

4.1. Any person operating a source of fugitive particulate matter in violation of the provisions of this rule shall 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.

#### **§45-17-5. Variance**

5.1. A variance may be granted for up to ten (10) days 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 an acceptable 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.

#### **§45-17-7. 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.

**§45-17-8. 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.