

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #1

Do Not Mark In This Box

FILED

2001 NOV 14 P 3:2

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Department of Environmental Protection - DAQ TITLE NUMBER: 45

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code §22-5-4

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
Particulate Matter"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: December 17, 2001 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Division of Air Quality - Conference Room A&B

7012 MacCorkle Avenue, S.E.
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Mr. John Benedict

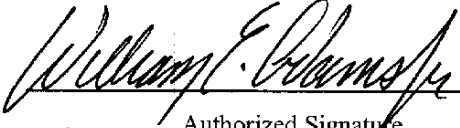
The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

Division of Air Quality

7012 MacCorkle Avenue, SE
Charleston, WV 25304

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature
Deputy Secretary

**BUREAU OF ENVIRONMENT
DEPARTMENT 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
Particulate Matter"

A. AUTHORITY: W.Va. Code §§22-5-4

B. SUMMARY OF RULE:

45CSR17 "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and other Sources of Particulate Matter" controls emissions from sources, activities and sites discharging particulate matter or industrial dust and further defines "statutory air pollution" by specifying certain conditions to be prohibited.

The rule revisions will provide the Department of Environmental Protection with enhanced capability to deal with particulate matter emissions which 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 particulate mater emissions. The revisions proposed herein were initiated by the Department in response to discussions with and at the direction of the Industrial Dust, Mining Permits and Dam Control Committee, a committee of the State Legislature. The revisions will allow the agency to deal more effectively with sources of industrial dust and particulate matter which interfere with the general public's enjoyment of life and property.

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 §22-1 A-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:

The Environmental Advisory Council will review the proposed rule at a meeting to be held in December 2001, and will make its recommendation to the Secretary at that time.

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 Particulate Matter"

Type of Rule: X Legislative Interpretive Procedural

Agency: Division of Air Quality

Address: 7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & 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 Division of Air Quality of continued implementation of this rule.

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 industrial dust and particulate emissions and to further define some of the conditions which constitute "statutory air pollution".

Rule Title: _____

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 on industrial sources. These sources are currently subject to the prohibition against "statutory air pollution", as well as other rules of the Department of Environmental Protection regulating the emissions of particulate matter.

C. Economic Impact on Citizens/Public at Large.

The proposed revisions should have a positive economic impact on the public at large, since the revised rule prohibits conditions often associated with property damage.

Date: _____

Signature of Agency Head or Authorized Representative:

FILED
NOV 14 P 3:27
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

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~~ Secretary 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. §22-5-4(a)(4).

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. A modified rule was filed on June 2, 2000 and became effective August 31, 2000.

1.7. Applicability. -- Notwithstanding the provisions of 45CSR2, 45CSR3, 45CSR5, 45CSR7 or any other rules of the Secretary to the

contrary, all sources, activities or sites that generate, emit or discharge particulate matter or industrial dust are subject to this rule, provided that compliance with the provisions of this rule shall not constitute compliance with the provisions of 45CSR2, 45CSR3, 45CSR5, 45CSR7 or any other rule of the Secretary.

§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.~~

2.1. This rule incorporates by reference terms defined in W. Va. Code §22-5-2.

2.2. "Industrial Dust" means any particulate matter from sources, activities or sites permitted or regulated by the Secretary.

2.3. "Material" means, but is not limited to, limestone, dolomite, iron ore, slag, coke, coal, sandstone, magnetite, sinter, sand, coal refuse, soda ash, ash, cement or earth.

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

2.5. "Particulate Matter" means any material except uncombined water that exists in a finely divided form as a liquid or a solid from activities including, but not limited to: handling, processing, 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.

2.6. "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.

2.7. "Secretary" means the Secretary of the Department of Environmental Protection or his or her designee.

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.

§45-17-3. Control and Prohibition of Fugitive Particulate Emissions Matter and Industrial Dust.

3.1. No person shall cause, suffer, allow or permit fugitive particulate matter or industrial dust to be discharged beyond the boundary lines of the property on which the discharge originates, or beyond the boundary limits of a permit or the operational area of a regulated activity or at any public or residential location, which causes or contributes to statutory air pollution including, but not limited to, the following prohibited conditions:

3.1.a. Excessive corrosion of metal surfaces as demonstrated by comparison with similar surfaces in the general area or other portions of the same structure;

3.1.b. Etching or discoloration of surface coating;

3.1.c. Soiling within a seven (7) day period in amounts that necessitate cleaning of real or personal property not otherwise required or refinishing of coated or polished surfaces;

3.1.d. Discoloration or soiling over and above normal wear and tear resulting from the tracking of deposited material onto carpets or other types of finished flooring which necessitates cleaning not otherwise required; or

3.1.e. Impaction of paint droplets or other coating materials onto surfaces.

~~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. Any person who is found to be in violation of this rule shall cease the discharge within the time frame provided by the Secretary and upon request of the Secretary submit a control plan. The control plan must be approved by the Secretary. The control plan 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 and other structures to enclose, and fans and filters to vent, the handling of materials, including adequate containment methods during painting, 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. §45-17-4. Variance~~

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

~~§45-17-6. §45-17-5. 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. §45-17-6. Enforcement.~~

~~7.1. Notwithstanding any other provisions in~~

~~this rule, the Director~~ The Secretary may take any and all enforcement actions authorized ~~under the Code~~ by law 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 and a plan for abatement of the prohibited conditions.

~~§45-17-8.~~ §45-17-7. **Inconsistency Between Rules.**

~~8.1.~~ 7.1. In the event of any inconsistency between this rule and any other existing rule of the ~~Division~~ Department of Environmental Protection, ~~such the~~ inconsistency shall be resolved by the determination of the ~~Director~~ Secretary ~~and such determination shall be~~ based upon the application of the more stringent provision, term, condition, method or rule.

~~8.2.~~ 7.2. ~~Fugitive particulate matter emission~~ Particulate matter requirements of any other applicable rule issued by the ~~Director~~ Secretary may be taken into consideration by the ~~Director~~ Secretary in determining compliance with this rule.