

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #6

Do Not Mark In This Box

FILED

MAY 1 3 35 PM '98

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 X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 23

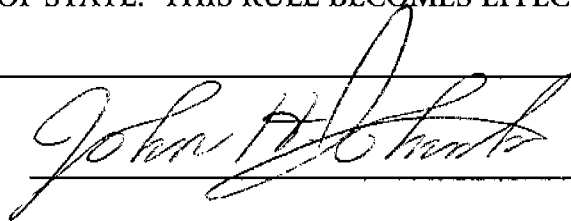
TITLE OF RULE BEING PROPOSED: "To Prevent and Control Emissions From Municipal  
Solid Waste Landfills"

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

AUTHORIZATION IS CITED IN (house or senate bill number) H. B. 4136

SECTION W. Va. Code §64-3-1, PASSED ON March 14, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: May 1, 1998





**BUREAU OF ENVIRONMENT**

10 McJunkin Road  
Nitro, WV 25143-2506

CECIL H. UNDERWOOD  
GOVERNOR

May 1, 1998

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

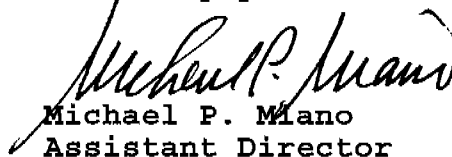
RE: 45CSR23 - "To Prevent and Control Emissions From  
Municipal Solid Waste Landfills"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your office as a final rule authorized by HB 4136, signed by Governor Underwood April 2, 1998.

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

Sincerely yours,

  
Michael P. Miano  
Assistant Director

JEC:cc

Attachment

cc: Karen Watson, OAQ

# **LEGISLATIVE HISTORY ABSTRACT**

## **45CSR23**

### **TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS**

Bureau of Environment  
Division of Environmental Protection  
Office of Air Quality  
House Bill 4136 Section 64-3-1

06/17/97	Filed Notice of Public Hearing with Secretary of State.
06/17/97	Initial Filing with Legislative Rule-Making Review Committee.
07/21/97	Held Public Hearing.
07/21/97	End of Public Comment Period.
08/01/97	Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
12/14/97	Rule Approved by Legislative Rule-Making Review Committee with Modifications.
01/07/98	Modified Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
03/14/98	Passed the West Virginia Legislature.
04/02/98	Approved by the Governor.
05/01/98	Rule Final Filed with Secretary of State.
05/01/98	Effective Date of Rule.

FILED

45CSR23

MAY 1 3 35 PM '98

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

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 23  
TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE  
LANDFILLS

**§45-23-1. General.**

1.1. Scope.-- This rule establishes standards of performance and emission guidelines for municipal solid waste landfills pursuant to Section 111 of the federal Clean Air Act as amended in 1990 (CAA). 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 1, 1998

1.4. Effective Date.-- May 1, 1998

1.5. Incorporate 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 Subpart WWW effective on March 12, 1996.

**§45-23-2. Definitions.**

2.1. Definitions of all terms used, but not defined in this subsection, shall have the meaning given them in 40 CFR Part 60 Subpart WWW, as amended. Terms not defined therein shall have the meaning given to them in the federal Clean Air Act, 40 CFR Subparts A and B, or this Rule.

2.2. "Administrator" shall mean the Administrator of the United States Environmental Protection Agency or his or her designated representative.

2.3. "Director" shall mean the Director of the West Virginia Division of Environmental Protection or his or her designated representative.

2.4. "Existing" shall mean each MSW landfill that meets both of the following conditions: (a) commenced construction, reconstruction or modification before May 30, 1991; and (b) has accepted waste at any time since November 8, 1987, or has additional design capacity available for

future waste deposition. Physical or operational changes made to an existing MSW landfill solely to comply with this rule shall not subject that landfill to the requirements of section 3.2.

2.5. “Municipal solid waste landfill” or “MSW landfill” shall mean an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (40 CFR §257.2) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

2.6. “Municipal solid waste landfill emissions” or “MSW landfill emissions” shall mean gas generated by the decomposition of organic waste deposited in a MSW landfill or derived from the evolution of organic compounds in the waste.

2.7. “New” shall mean each MSW landfill that commenced construction, reconstruction, or modification or began accepting waste on or after May 30, 1991.

2.8. “NMOC”, ‘Non Methane Organic Compounds’ shall mean nonmethane organic compounds, as measured according to the provisions of 40 CFR 60.754.

### **§45-23-3. Requirements.**

3.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, modified, or operated a MSW landfill which results in a violation of this rule.

3.2. Each new MSW landfill shall comply with all of the applicable standards, requirements and provisions of 40 CFR Part 60 Subpart WWW, as amended including any reference methods, performance specifications and other test methods associated with Subpart WWW, which are herein incorporated by reference with the exceptions as follows:

3.2.a. In lieu of 40 CFR 60.758(a), the following provision applies: Each owner or operator of a MSW landfill subject to the provisions of 40 CFR 60.752(b) shall keep for at least 5 years up-to-date, readily accessible, on-site records of the maximum design capacity, surface monitoring design plan, the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Either paper copy or electronic format records are acceptable.

3.3. Each existing MSW landfill shall comply with all of the applicable standards, requirements and provisions of 40 CFR Part 60 Subpart WWW, as referenced in 40 CFR 60 Subpart Cc, and as amended including any reference methods, performance specifications and other test methods associated with Subpart WWW, which are herein incorporated by reference with the exceptions as follows:

3.3.a. §40-60.750

3.3.b. In lieu of 40 CFR 60.752(b)(2)(i)(B), the following provision applies: The collection and control system design plan shall include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, record keeping or reporting provisions of 40 CFR 60.753 through 40 CFR 60.758 proposed by the owner or operator. In addition, the collection and control design plan must specify:

- 3.3.b.1. The date by which contracts for control system/process modifications shall be awarded, (which shall be no later than 20 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).
- 3.3.b.2. The date by which on-site construction or installation of the air pollution control device(s) or process changes will begin (which shall be no later than 24 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).
- 3.3.b.3. The date by which the construction or installation of the air pollution control device(s) or process changes capable of meeting the emission standards established under 40 CFR 60.752(b)(2)(iii) will be complete (which shall be no later than 30 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).
- 3.3.b.4. The date by which the MSW landfill will achieve compliance with 40 CFR 60.753 (which shall be no later than 30 months [except where 40 CFR 60 indicates otherwise] after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).
- 3.3.b.5. The date by which the MSW landfill will demonstrate compliance with applicable requirements by conducting a performance test in accordance with procedures specified by the Director (which shall be no later than 180 days after completion of construction or installation of the air pollution control device).

3.3.c. In lieu of 40 CFR 60.752(b)(2)(ii), the provisions of paragraphs 1. and 2. below shall apply.

- 3.3.c.1. Install a collection and control system that effectively captures the gas generated within the landfill as required by 40 CFR 60.752(b)(2)(i) within 30 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year, unless Tier 2 or Tier 3 calculations demonstrate that the NMOC emission rate is less than 50 megagrams per year, as specified in 40 CFR 60.757(c)(1) or (2).
- 3.3.c.2. The provisions of 40 CFR 60.752(b)(2)(ii)(A) and (B) apply as stated

therein.

3.3.d. In lieu of 40 CFR 60.757(a)(1) the following provision applies: The initial design capacity report shall be submitted by the effective date of this rule plus 90 days.

3.3.e. In lieu of 40 CFR 60.757(b)(1)(i), the following provision applies: The initial NMOC emission rate report shall be submitted by the effective date of this rule plus 90 days and may be combined with the initial design capacity report required in 40 CFR 60.757(a). Subsequent NMOC emission rate reports shall be submitted annually, thereafter, except as provided for in 40 CFR 60.757(b)(1)(ii) and 40 CFR 60.757(b)(3).

3.3.f. In lieu of 40 CFR 60.758(a), the following provision applies: Each owner or operator of a MSW landfill subject to the provisions of 40 CFR 60.752(b) shall keep for at least 5 years up-to-date, readily accessible, on-site records of the maximum design capacity, surface monitoring design plan, the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Either paper copy or electronic format records are acceptable.

**§45-23-4. Director.**

4.1. Any and all references in 40 CFR Part 60 to the "Administrator" are amended to be the "Director" except in the following references which shall remain "Administrator."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:

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 record keeping and reporting

4.1.b.7. applicability determinations

4.1.c. where the context of the regulation clearly requires otherwise.

**§45-23-5. Permits.**

5.1. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way limited or inapplicable with the exception as follows:

5.1.a. A control system installed at a MSW landfill solely to comply with this rule and 40 CFR 60.752(b)(2)(iii), shall not be defined as a stationary source under §45-13-2.25.a. for purposes of applicability of §45-13 permit requirements.

**§45-23-6. 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, method or rule.

6317

45-23

1 Bill-DEP, P

**H. B. 4159**

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(By Delegates Hunt, Linch, Compton, Jenkins,  
Faircloth and Riggs)  
[Introduced January 30, 1998; referred to the  
Committee on the Judiciary.]

10 A BILL to amend and reenact section one, article three,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of environmental  
14 protection to promulgate a legislative rule relating  
15 to the prevention and control of emissions from  
16 municipal solid waste landfills.

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

18 That section one, article three, chapter sixty-four of  
19 the code of West Virginia, one thousand nine hundred  
20 thirty-one, as amended, be amended and reenacted, to read  
21 as follows:

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

4159

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

2 (a) The legislative rule filed in the state register  
3 on the thirtieth day of August, one thousand nine hundred  
4 ninety-six, authorized under the authority of section six,  
5 article eighteen, chapter twenty-two of this code, relating  
6 to the division of environmental protection (hazardous  
7 waste management, 33 CSR 20), is authorized.

8 (b) The legislative rule filed in the state register  
9 on the twenty-ninth day of August, one thousand nine  
10 hundred ninety-six, authorized under the authority of  
11 section four, article five, chapter twenty-two of this  
12 code, relating to the division of environmental protection  
13 (standards of performance for new stationary sources  
14 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

15 (c) The legislative rule filed in the state register  
16 on the twenty-ninth day of August, one thousand nine  
17 hundred ninety-six, authorized under the authority of  
18 section four, article five, chapter twenty-two of this  
19 code, relating to the division of environmental protection  
20 (emission standards for hazardous air pollutants pursuant  
21 to 40 CFR Part 63, 45 CSR 34), is authorized.

22 (d) The legislative rule filed in the state register  
23 on the twenty-eighth day of August, one thousand nine

1 hundred ninety-six, authorized under the authority of  
2 section six, article seventeen, chapter twenty-two of this  
3 code, modified by the division of environmental protection  
4 to meet the objections of the legislative rule-making  
5 review committee and refiled in the state register on the  
6 twenty-second day of October, one thousand nine hundred  
7 ninety-six, relating to the division of environmental  
8 protection (underground storage tank insurance trust fund,  
9 33 CSR 32), is authorized.

10 (e) The legislative rule filed in the state register  
11 on the twenty-ninth day of August, one thousand nine  
12 hundred ninety-six, authorized under the authority of  
13 section three, article one, chapter twenty-two of this  
14 code, modified by the division of environmental protection  
15 to meet the objections of the legislative rule-making  
16 review committee and refiled in the state register on the  
17 twentieth day of December, one thousand nine hundred  
18 ninety-six, relating to the division of environmental  
19 protection (WV/NPDES regulations for coal mining  
20 facilities, 47 CSR 30), is authorized.

21 (f) The legislative rule filed in the state register  
22 on the thirtieth day of August, one thousand nine hundred  
23 ninety-six, authorized under the authority of section four,

1 article three, chapter twenty-two of this code, modified by  
2 the division of environmental protection to meet the  
3 objections of the legislative rule-making review committee  
4 and refiled in the state register on the twenty-first day  
5 of February, one thousand nine hundred ninety-seven,  
6 relating to the division of environmental protection  
7 (surface mining and reclamation regulations, 38 CSR 2), is  
8 authorized, with the following amendm nts:

9 "On page three, subsection 2.4, by striking out the  
10 words "Coal seams commonly associated with such minerals  
11 may include, but are not limited to Waynesburg, Washington,  
12 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk  
13 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and  
14 Stockton Lewiston";

15 On page three, subsection 2.4, line eight, by striking  
16 out the words "these seams are", and inserting in lieu  
17 thereof the words "the seam is";

18 On page nine, subsection 2.43, line two, after the  
19 word "highwall", by inserting the words "except in  
20 operations where the entire upper horizon above the lowest  
21 coal seam is proposed to be partly or entirely removed";

22 On page sixteen, subsection 2.95, line seven after  
23 the "any", by inserting the word "substantial";

1        On page eighteen, subsection 2.108, line two, after  
2 the word "stream." by adding the following:    Examples  
3 include wildlife ponds, settling basins and all ponds and  
4 facilities or structures used for water treatment.;

5        On page nineteen, subsection 2.120, line three, by  
6 striking the word "or" and inserting in lieu thereof the  
7 word "and";

8        On page twenty-nine, subsection 3.2.e., after the word  
9 "period" by striking the remainder of the subdivision  
10 3.2.e.;

11       On page forty-nine, subsection 3.14.b.7., by striking  
12 the entire paragraph;

13       On page forty-nine, subsection 3.14.b.8., by striking  
14 the entire paragraph;

15       On page forty-nine, by renumbering the remaining  
16 paragraphs;

17       On page fifty-one, subparagraph 3.14.b.14E, line one,  
18 before the word "A", by inserting the words "If requested  
19 by the Director";

20       On page fifty-one, subsection 3.14.b.15.B., by  
21 striking the entire subparagraph, and inserting in lieu  
22 thereof the following: 3.14.b.15.B. Surface water must be  
23 diverted around or over the material by properly designed

1 and stabilized diversion channels which have been designed  
2 using the best current technology to provide protection to  
3 the environment or the health, welfare and safety of the  
4 public. The channel shall be designed and constructed to  
5 ensure stability of the remaining material, control  
6 erosion, and minimize water infiltration into the remaining  
7 material.;

8 On page sev nty-two, subdivision 3.29.a, line five  
9 after the word "IBR", by inserting the words "or where it  
10 has been demonstrated to the satisfaction of the Director  
11 that limited coal removal on areas immediately adjacent to  
12 the existing permit is the only practical alternative to  
13 recovery of unanticipated reserves or necessary to enhance  
14 reclamation efforts or environmental protection";

15 On page eighty-six, by inserting a new subsection 3.35  
16 to read as follows: 3.35. All grade measurements and  
17 linear measurements in this rule shall be subject to a  
18 tolerance of two percent (2%). All angles in this rule  
19 shall be measured from the horizontal and shall be subject  
20 to a tolerance of five percent (5%): *Provided, however,*  
21 this allowable deviation from the approved plan does not  
22 affect storage capacity and/or performance standards.

23 On page one hundred eight, subdivision 5.5.c., line

1 two, after the word "landowner", by striking the remainder  
2 of the paragraph and inserting in lieu thereof the words  
3 "requesting the permanent structures be left for  
4 recreational or wildlife propagation purposes or for any  
5 beneficial uses to the landowner";

6 On page one hundred twelve, subdivision 6.5.a., line  
7 five, after the word "Sunday." by adding the following:  
8 *Provided, however,* the Director may grant approval of a  
9 request for Sunday blasting if the operator demonstrates to  
10 the satisfaction of the Director that the blasting is  
11 necessary and there has been an opportunity for a public  
12 hearing.;

13 On page one hundred twenty-six, paragraph 9.2.i.2,  
14 after the word "achieved" by inserting: An alternate  
15 maximum or minimum soil pH may be approved based on the  
16 optimum pH for the revegetation species.;

17 On page one hundred thirty, line one, paragraph  
18 9.3.h.1., by striking out the paragraph in its entirety,  
19 and inserting in lieu thereof: 9.3.h.1. The minimum  
20 stocking rate of commercial tree species shall be in  
21 accordance with the approved forest management plan  
22 prepared by a registered professional forester. In no case  
23 may the rate be less than four hundred fifty (450) stems

1 per acre of commercial tree species;

2 On page one hundred thirty, paragraph 9.3.h.2., by  
3 striking out the paragraph in its entirety, and by  
4 renumbering the subsequent paragraphs;

5 On page one hundred thirty, in renumbered paragraph  
6 9.3.h.2., after the word "than", by striking out the words  
7 "four hundred fifty (450)", and inserting in lieu thereof  
8 "three hundred (300);" On page one hundred thirty, in  
9 renumbered paragraph 9.3.h.2., after the word "acre", by  
10 inserting the words "or the rate specified in the forest  
11 management plan, whichever is greater,";

12 On page two hundred twenty-two, subdivision 14.11.e,  
13 line 6, by striking out the word "operable" and by  
14 inserting in lieu thereof "such condition that operations  
15 could be resumed within sixty (60) days";

16 On page two hundred twenty-three, subdivision  
17 14.11.f., line four, by striking out the word "operative",  
18 and by inserting in lieu thereof the words "such condition  
19 that the operations could be resumed within sixty (60)  
20 days";

21 On page two hundred twenty-three, subdivision  
22 14.11.f., line four, after the word "is", by inserting the  
23 words "protected from unauthorized entry";

1        On page two hundred thirty-eight, subparagraph  
2 14.15.b.6.A., line five, after the word "exceed", by  
3 striking out the words "fifty (50) percent of the total  
4 permit acreage, or four hundred (400) acres, whichever is  
5 less, on operations which consist of at least three spreads  
6 of equipment", and inserting in lieu thereof the words  
7 "five hundred (500) acres on operations which consist of  
8 multiple spreads of equipment";

9        On page two hundred thirty-nine, subsection 14.15.c.,  
10 line three, after the word "regraded", by inserting the  
11 words "and stabilized";

12        On page two hundred thirty-nine, subsection 14.15.c.,  
13 line four, after the word "plan", by striking out the  
14 "comma" and the remainder of the subparagraph, and  
15 inserting in lieu thereof the words: The following shall  
16 not be included in the calculation of disturbed area.;

17        On page two hundred forty, paragraph 14.15.c.2., line  
18 seven, after the word "benches", by inserting the words  
19 "without regard to like thickness";

20        On page two hundred forty, paragraph 14.15.c.5, line  
21 two, after the word "graded", by inserting the words "with  
22 material placed in a stable, controlled manner which will  
23 not subsequently be moved".

1 (g) The legislative rule filed in the state register  
2 on the twenty-ninth day of August, one thousand nine  
3 hundred ninety-six, authorized under the authority of  
4 section ten, article five, chapter twenty-two of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the twenty-  
8 sixth day of November, one thousand nine hundred  
9 ninety-six, relating to the division of environmental  
10 protection (confidential information, 45 CSR 31), is  
11 authorized.

12 (h) The legislative rule filed in the state register  
13 on the twenty-ninth day of August, one thousand nine  
14 hundred ninety-six, authorized under the authority of  
15 section four, article five, chapter twenty-two of this  
16 code, modified by the division of environmental protection  
17 to meet the objections of the legislative rule-making  
18 review committee and refiled in the state register on the  
19 sixteenth day of January, one thousand nine hundred  
20 ninety-seven, relating to the division of environmental  
21 protection (to prevent and control air pollution from  
22 hazardous waste treatment, storage or disposal facilities,  
23 45 CSR 25), is authorized.

1 (i) The legislative rule filed in the state register  
2 on the fifth day of February, one thousand nine hundred  
3 ninety-seven, authorized under the authority of section  
4 three, article twenty-two, chapter twenty-two of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the twenty-  
8 fifth day of February, one thousand nine hundred  
9 ninety-seven, relating to the division of environmental  
10 protection (voluntary remediation and redevelopment, 60 CSR  
11 3), is authorized.

12 (j) That title sixty, series one of the code of state  
13 rules be amended by deleting the current interpretative  
14 rule for the office of environmental advocate and inserting  
15 in lieu thereof the following legislative rule, to read as  
16 follows:

17 "**§61-10-1. General.**

18 1.1. **Scope.** - This legislative rule governs and  
19 controls the appointment and qualifications of the position  
20 of Environmental Advocate within the Division of  
21 Environmental Protection.

22 1.2. **Authority** - West Virginia Code §22-1-3, 22-1-3a,  
23 22-20.

1           1.3. Filing Date -

2           1.4. Effective Date - July 1, 1997.

3 §61-10-2. Appointment, Salary and Qualifications.

4           2.1. Appointment. - The position of Environmental  
5 Advocate will be a full-time position, will be appointed by  
6 the Director, and will serve at the will and pleasure of  
7 the Director of the Division of Environmental Protection in  
8 accordance with the West Virginia Code §22-20-1.

9           2.2. Salary. - The salary of the position of  
10 Environmental Advocate will be set by the Director and is  
11 subject to future adjustments at the discretion of the  
12 Director.

13           2.3. Qualifications. - The Director will receive or  
14 solicit applications for the position of Environmental  
15 Advocate from persons having the following minimum  
16 qualifications:

17           2.3.a. A citizen and resident of the State of West  
18 Virginia.

19           2.3.b. A graduate from an accredited college or  
20 university with a four-year degree in a field of study  
21 directly related to the qualifications, powers, and duties  
22 of the position as set forth by the director.

1           2.3.c. A minimum of two years full-time or cumulative  
2 experience in work directly related to environmental  
3 protection, or other public service work or experience  
4 which demonstrates the ability to carry out the powers and  
5 duties of the position as set forth by the director.

6           2.3.d. A working familiarity with some of the legal  
7 requirements and programmatic functions of the Division of  
8 Environmental Protection.

9           2.3.e. A demonstrated ability to skillfully verbally  
10 and by writing communicate in a public forum.

11           2.3.f. A demonstrated ability to use word processing  
12 software for a computer and other necessary computer  
13 skills as determined by the director.

14           2.3.g. A valid West Virginia driver's license.

15 **§61-10-3. Powers and Limitations -**

16           The Environmental Advocate will carry out the duties  
17 of the position as set forth in this rule, and as  
18 prescribed by the Director in accordance with the  
19 following:

20           3.1. The Environmental Advocate will be guided in all  
21 actions by the policy statement and the nine purposes set  
22 forth in West Virginia Code §22-1-1 (b).

23           3.2. The Environmental Advocate may not in any

1 official capacity represent any person in, or file on  
2 behalf of any person, legal or quasi-legal actions, either  
3 in support of or opposed to the Division of Environmental  
4 Protection without the expressed approval of the Director,  
5 and under supervision of the Division of Environmental  
6 Protection's General Counsel.

7 3.3. The Environmental Advocate may not in any  
8 official capacity organize public campaigns in support of,  
9 or in opposition to official positions taken by the  
10 Division of Environmental Protection on environmental  
11 matters, and will not in any official capacity actively  
12 participate in any such organized campaign."

13 (k) The director of the division of environmental  
14 protection is hereby authorized to propose for promulgation  
15 an emergency rule to amend a current legislative rule  
16 relating to monitoring of air quality (to prevent and  
17 control particulate air pollution from manufacturing  
18 process operation, 45 CSR 7).

19 (l) The legislative rule filed in the state register  
20 on the eighteenth day of March, one thousand nine hundred  
21 ninety-seven, relating to the division of environmental  
22 protection (yard waste composting, 47 CSR 38E) is  
23 authorized.

1       (m) The legislative rule filed in the state register  
2 on the first day of August, one thousand nine hundred  
3 ninety-seven, authorized under the authority of section  
4 four, article five, chapter twenty-two, of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the seventh  
8 day of January, one thousand nine hundred ninety-eight,  
9 relating to the division of environmental protection (to  
10 prevent and control of emissions from municipal solid waste  
11 landfills, 45 CSR 23), is authorized.

12

13       NOTE: The purpose of this bill is to authorize the  
14 Division of Environmental Protection to promulgate a  
15 legislative rule relating to the Prevention and Control of  
16 Emissions From Municipal Solid Waste Landfills.

17

18       Strike-throughs indicate language that would be  
19 stricken from the present law, and underscoring indicates  
20 new language that would be added.

45-23

**Senate Bill No. 292**

(By Senator(s) Ross, Anderson, Bowman,  
Macnaughtan, Boley and Buckalew)

[Introduced January 30, 1998; referred to the  
Committee on Natural Resources; and then to the  
Committee on the Judiciary.]

10 A BILL to amend and reenact section one, article three,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of environmental  
14 protection to promulgate a legislative rule relating  
15 to the prevention and control of emissions from  
16 municipal solid waste landfills.

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

18 That section one, article three, chapter sixty-four of  
19 the code of West Virginia, one thousand nine hundred  
20 thirty-one, as amended, be amended and reenacted, to read  
21 as follows:

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

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

2 (a) The legislative rule filed in the state register  
3 on the thirtieth day of August, one thousand nine hundred  
4 ninety-six, authorized under the authority of section six,  
5 article eighteen, chapter twenty-two of this code, relating  
6 to the division of environmental protection (hazardous  
7 waste management, 33 CSR 20), is authorized.

8 (b) The legislative rule filed in the state register  
9 on the twenty-ninth day of August, one thousand nine  
10 hundred ninety-six, authorized under the authority of  
11 section four, article five, chapter twenty-two of this  
12 code, relating to the division of environmental protection  
13 (standards of performance for new stationary sources  
14 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

15 (c) The legislative rule filed in the state register  
16 on the twenty-ninth day of August, one thousand nine  
17 hundred ninety-six, authorized under the authority of  
18 section four, article five, chapter twenty-two of this  
19 code, relating to the division of environmental protection  
20 (emission standards for hazardous air pollutants pursuant  
21 to 40 CFR Part 63, 45 CSR 34), is authorized.

22 (d) The legislative rule filed in the state register  
23 on the twenty-eighth day of August, one thousand nine

1 hundred ninety-six, authorized under the authority of  
2 section six, article seventeen, chapter twenty-two of this  
3 code, modified by the division of environmental protection  
4 to meet the objections of the legislative rule-making  
5 review committee and refiled in the state register on the  
6 twenty-second day of October, one thousand nine hundred  
7 ninety-six, relating to the division of environmental  
8 protection (underground storage tank insurance trust fund,  
9 33 CSR 32), is authorized.

10 (e) The legislative rule filed in the state register  
11 on the twenty-ninth day of August, one thousand nine  
12 hundred ninety-six, authorized under the authority of  
13 section three, article one, chapter twenty-two of this  
14 code, modified by the division of environmental protection  
15 to meet the objections of the legislative rule-making  
16 review committee and refiled in the state register on the  
17 twentieth day of December, one thousand nine hundred  
18 ninety-six, relating to the division of environmental  
19 protection (WV/NPDES regulations for coal mining  
20 facilities, 47 CSR 30), is authorized.

21 (f) The legislative rule filed in the state register  
22 on the thirtieth day of August, one thousand nine hundred  
23 ninety-six, authorized under the authority of section four,

1 article three, chapter twenty-two of this code, modified by  
2 the division of environmental protection to meet the  
3 objections of the legislative rule-making review committee  
4 and refiled in the state register on the twenty-first day  
5 of February, one thousand nine hundred ninety-seven,  
6 relating to the division of environmental protection  
7 (surface mining and reclamation regulations, 38 CSR 2), is  
8 authorized, with the following amendments:

9 "On page three, subsection 2.4, by striking out the  
10 words "Coal seams commonly associated with such minerals  
11 may include, but are not limited to Waynesburg, Washington,  
12 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk  
13 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and  
14 Stockton Lewiston";

15 On page three, subsection 2.4, line eight, by striking  
16 out the words "these seams are", and inserting in lieu  
17 thereof the words "the seam is";

18 On page nine, subsection 2.43, line two, after the  
19 word "highwall", by inserting the words "except in  
20 operations where the entire upper horizon above the lowest  
21 coal seam is proposed to be partly or entirely removed";

22 On page sixteen, subsection 2.95, line seven after  
23 the "any", by inserting the word "substantial";

1           On page eighteen, subsection 2.108, line two, after  
2 the word "stream." by adding the following: Examples  
3 include wildlife ponds, settling basins and all ponds and  
4 facilities or structures used for water treatment.;

5           On page nineteen, subsection 2.120, line three, by  
6 striking the word "or" and inserting in lieu thereof the  
7 word "and";

8           On page twenty-nine, subsection 3.2.e., after the word  
9 "period" by striking the remainder of the subdivision  
10 3.2.e.;

11           On page forty-nine, subsection 3.14.b.7., by striking  
12 the entire paragraph;

13           On page forty-nine, subsection 3.14.b.8., by striking  
14 the entire paragraph;

15           On page forty-nine, by renumbering the remaining  
16 paragraphs;

17           On page fifty-one, subparagraph 3.14.b.14E, line one,  
18 before the word "A", by inserting the words "If requested  
19 by the Director";

20           On page fifty-one, subsection 3.14.b.15.B., by  
21 striking the entire subparagraph, and inserting in lieu  
22 thereof the following: 3.14.b.15.B. Surface water must be  
23 diverted around or over the material by properly designed

1 and stabilized diversion channels which have been designed  
2 using the best current technology to provide protection to  
3 the environment or the health, welfare and safety of the  
4 public. The channel shall be designed and constructed to  
5 ensure stability of the remaining material, control  
6 erosion, and minimize water infiltration into the remaining  
7 material.;

8 On page seventy-two, subdivision 3.29.a, line five  
9 after the word "IBR", by inserting the words "or where it  
10 has been demonstrated to the satisfaction of the Director  
11 that limited coal removal on areas immediately adjacent to  
12 the existing permit is the only practical alternative to  
13 recovery of unanticipated reserves or necessary to enhance  
14 reclamation efforts or environmental protection";

15 On page eighty-six, by inserting a new subsection 3.35  
16 to read as follows: 3.35. All grade measurements and  
17 linear measurements in this rule shall be subject to a  
18 tolerance of two percent (2%). All angles in this rule  
19 shall be measured from the horizontal and shall be subject  
20 to a tolerance of five percent (5%): *Provided, however,*  
21 this allowable deviation from the approved plan does not  
22 affect storage capacity and/or performance standards.

23 On page one hundred eight, subdivision 5.5.c., line

1 two, after the word "landowner", by striking the remainder  
2 of the paragraph and inserting in lieu thereof the words  
3 "requesting the permanent structures be left for  
4 recreational or wildlife propagation purposes or for any  
5 beneficial uses to the landowner";

6 On page one hundred twelve, subdivision 6.5.a., line  
7 five, after the word "Sunday." by adding the following:  
8 *Provided, however,* the Director may grant approval of a  
9 request for Sunday blasting if the operator demonstrates to  
10 the satisfaction of the Director that the blasting is  
11 necessary and there has been an opportunity for a public  
12 hearing.;

13 On page one hundred twenty-six, paragraph 9.2.i.2,  
14 after the word "achieved" by inserting: An alternate  
15 maximum or minimum soil pH may be approved based on the  
16 optimum pH for the revegetation species.;

17 On page one hundred thirty, line one, paragraph  
18 9.3.h.1., by striking out the paragraph in its entirety,  
19 and inserting in lieu thereof: 9.3.h.1. The minimum  
20 stocking rate of commercial tree species shall be in  
21 accordance with the approved forest management plan  
22 prepared by a registered professional forester. In no case  
23 may the rate be less than four hundred fifty (450) stems

1 per acre of commercial tree species;

2 On page one hundred thirty, paragraph 9.3.h.2., by  
3 striking out the paragraph in its entirety, and by  
4 renumbering the subsequent paragraphs;

5 On page one hundred thirty, in renumbered paragraph  
6 9.3.h.2., after the word "than", by striking out the words  
7 "four hundred fifty (450)", and inserting in lieu thereof  
8 "three hundred (300);" On page one hundred thirty, in  
9 renumbered paragraph 9.3.h.2., after the word "acre", by  
10 inserting the words "or the rate specified in the forest  
11 management plan, whichever is greater,";

12 On page two hundred twenty-two, subdivision 14.11.e,  
13 line 6, by striking out the word "operable" and by  
14 inserting in lieu thereof "such condition that operations  
15 could be resumed within sixty (60) days";

16 On page two hundred twenty-three, subdivision  
17 14.11.f., line four, by striking out the word "operative",  
18 and by inserting in lieu thereof the words "such condition  
19 that the operations could be resumed within sixty (60)  
20 days";

21 On page two hundred twenty-three, subdivision  
22 14.11.f., line four, after the word "is", by inserting the  
23 words "protected from unauthorized entry";

1        On page two hundred thirty-eight, subparagraph  
2 14.15.b.6.A., line five, after the word "exceed", by  
3 striking out the words "fifty (50) percent of the total  
4 permit acreage, or four hundred (400) acres, whichever is  
5 less, on operations which consist of at least three spreads  
6 of equipment", and inserting in lieu thereof the words  
7 "five hundred (500) acres on operations which consist of  
8 multiple spreads of equipment";

9        On page two hundred thirty-nine, subsection 14.15.c.,  
10 line three, after the word "regraded", by inserting the  
11 words "and stabilized";

12        On page two hundred thirty-nine, subsection 14.15.c.,  
13 line four, after the word "plan", by striking out the  
14 "comma" and the remainder of the subparagraph, and  
15 inserting in lieu thereof the words: The following shall  
16 not be included in the calculation of disturbed area.;

17        On page two hundred forty, paragraph 14.15.c.2., line  
18 seven, after the word "benches", by inserting the words  
19 "without regard to like thickness";

20        On page two hundred forty, paragraph 14.15.c.5, line  
21 two, after the word "graded", by inserting the words "with  
22 material placed in a stable, controlled manner which will  
23 not subsequently be moved".

1 (g) The legislative rule filed in the state register  
2 on the twenty-ninth day of August, one thousand nine  
3 hundred ninety-six, authorized under the authority of  
4 section ten, article five, chapter twenty-two of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the twenty-  
8 sixth day of November, one thousand nine hundred  
9 ninety-six, relating to the division of environmental  
10 protection (confidential information, 45 CSR 31), is  
11 authorized.

12 (h) The legislative rule filed in the state register  
13 on the twenty-ninth day of August, one thousand nine  
14 hundred ninety-six, authorized under the authority of  
15 section four, article five, chapter twenty-two of this  
16 code, modified by the division of environmental protection  
17 to meet the objections of the legislative rule-making  
18 review committee and refiled in the state register on the  
19 sixteenth day of January, one thousand nine hundred  
20 ninety-seven, relating to the division of environmental  
21 protection (to prevent and control air pollution from  
22 hazardous waste treatment, storage or disposal facilities,  
23 45 CSR 25), is authorized.

1 (i) The legislative rule filed in the state register  
2 on the fifth day of February, one thousand nine hundred  
3 ninety-seven, authorized under the authority of section  
4 three, article twenty-two, chapter twenty-two of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the twenty-  
8 fifth day of February, one thousand nine hundred  
9 ninety-seven, relating to the division of environmental  
10 protection (voluntary remediation and redevelopment, 60 CSR  
11 3), is authorized.

12 (j) That title sixty, series one of the code of state  
13 rules be amended by deleting the current interpretative  
14 rule for the office of environmental advocate and inserting  
15 in lieu thereof the following legislative rule, to read as  
16 follows:

17 **"§61-10-1. General.**

18 **1.1. Scope.** - This legislative rule governs and  
19 controls the appointment and qualifications of the position  
20 of Environmental Advocate within the Division of  
21 Environmental Protection.

22 **1.2. Authority** - West Virginia Code §22-1-3, 22-1-3a,  
23 22-20.

1           **1.3. Filing Date -**

2           **1.4. Effective Date - July 1, 1997.**

3 **§61-10-2. Appointment, Salary and Qualifications.**

4           **2.1. Appointment.** - The position of Environmental  
5 Advocate will be a full-time position, will be appointed by  
6 the Director, and will serve at the will and pleasure of  
7 the Director of the Division of Environmental Protection in  
8 accordance with the West Virginia Code §22-20-1.

9           **2.2. Salary.** - The salary of the position of  
10 Environmental Advocate will be set by the Director and is  
11 subject to future adjustments at the discretion of the  
12 Director.

13           **2.3. Qualifications.** - The Director will receive or  
14 solicit applications for the position of Environmental  
15 Advocate from persons having the following minimum  
16 qualifications:

17           **2.3.a.** A citizen and resident of the State of West  
18 Virginia.

19           **2.3.b.** A graduate from an accredited college or  
20 university with a four-year degree in a field of study  
21 directly related to the qualifications, powers, and duties  
22 of the position as set forth by the director.

1           2.3.c. A minimum of two years full-time or cumulative  
2 experience in work directly related to environmental  
3 protection, or other public service work or experience  
4 which demonstrates the ability to carry out the powers and  
5 duties of the position as set forth by the director.

6           2.3.d. A working familiarity with some of the legal  
7 requirements and programmatic functions of the Division of  
8 Environmental Protection.

9           2.3.e. A demonstrated ability to skillfully verbally  
10 and by writing communicate in a public forum.

11           2.3.f. A demonstrated ability to use word processing  
12 software for a computer and other necessary computer  
13 skills as determined by the director.

14           2.3.g. A valid West Virginia driver's license.

15 **§61-10-3. Powers and Limitations -**

16           The Environmental Advocate will carry out the duties  
17 of the position as set forth in this rule, and as  
18 prescribed by the Director in accordance with the  
19 following:

20           3.1. The Environmental Advocate will be guided in all  
21 actions by the policy statement and the nine purposes set  
22 forth in West Virginia Code §22-1-1 (b).

23           3.2. The Environmental Advocate may not in any

1 official capacity represent any person in, or file on  
2 behalf of any person, legal or quasi-legal actions, either  
3 in support of or opposed to the Division of Environmental  
4 Protection without the expressed approval of the Director,  
5 and under supervision of the Division of Environmental  
6 Protection's General Counsel.

7       3.3. The Environmental Advocate may not in any  
8 official capacity organize public campaigns in support of,  
9 or in opposition to official positions taken by the  
10 Division of Environmental Protection on environmental  
11 matters, and will not in any official capacity actively  
12 participate in any such organized campaign."

13       (k) The director of the division of environmental  
14 protection is hereby authorized to propose for promulgation  
15 an emergency rule to amend a current legislative rule  
16 relating to monitoring of air quality (to prevent and  
17 control particulate air pollution from manufacturing  
18 process operation, 45 CSR 7).

19       (1) The legislative rule filed in the state register  
20 on the eighteenth day of March, one thousand nine hundred  
21 ninety-seven, relating to the division of environmental  
22 protection (yard waste composting, 47 CSR 38E) is  
23 authorized.

1       (m) The legislative rule filed in the state register  
2 on the first day of August, one thousand nine hundred  
3 ninety-seven, authorized under the authority of section  
4 four, article five, chapter twenty-two, of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the seventh  
8 day of January, one thousand nine hundred ninety-eight,  
9 relating to the division of environmental protection (to  
10 prevent and control of emissions from municipal solid waste  
11 landfills, 45 CSR 23), is authorized.

12

13       NOTE: The purpose of this bill is to authorize the  
14 Division of Environmental Protection to promulgate a  
15 legislative rule relating to the Prevention and Control of  
16 Emissions From Municipal Solid Waste Landfills.

17

18       Strike-throughs indicate language that would be  
19 stricken from the present law, and underscoring indicates  
20 new language that would be added.