

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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APR 25 3 48 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

Division of Environmental Protection
AGENCY: Office of Air Quality TITLE NUMBER: 45CSR25

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR25

TITLE OF RULE BEING AMENDED: To Prevent and Control Air Pollution from
Hazardous Waste Treatment Storage or Disposal Facilities

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 4224

SECTION 64-3-1(b), PASSED ON March 9, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 1, 1996


AUTHORIZED SIGNATURE

G. Dale Farley
Chief

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
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WILLIAM H. HARRINGTON
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JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

March 12, 1996

G. Dale Farley
DEP - Air Quality
1558 Washington Street East
Charleston, WV 25311

HB 4224 authorizing, Title 45, Series 25, To Prevent & Control Air Pollution From Hazardous Waste Treatment Storage or Disposal Facilities passed the Legislature on **March 9, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **HB 4224** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 4224 Section 64-3-1(b)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

April 24, 1996

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

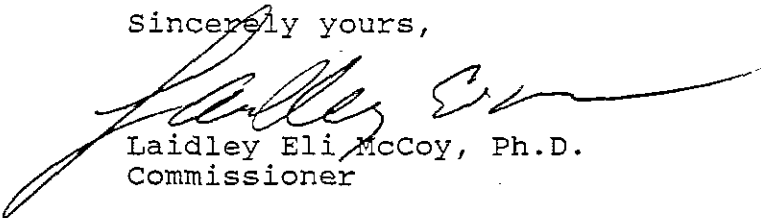
RE: 45CSR25 - "Prevention and Control of Air Pollution
From Hazardous Waste Treatment, Storage
or Disposal Facilities"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office the above-captioned rule as final adoption of a legislative rule authorized by the West Virginia Legislature.

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

Sincerely yours,



Laidley Eli McCoy, Ph.D.
Commissioner

LEM:cc

Attachment

FILED

45CSR25

APR 25 3 48 PM '96

TITLE 45
LEGISLATIVE RULES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

SERIES 25

TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE
TREATMENT, STORAGE, OR DISPOSAL FACILITIES

§45-25-1. General.

1.1. Scope.

a. The intent and purpose of this rule is to establish a program of regulation over air emissions from the treatment, storage and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes. Further, all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such any hazardous waste or constituent thereof in such quantities as to cause ambient air concentrations which may be injurious to human health or welfare which would interfere with the enjoyment of life or property.

b. The requirements of this rule apply to all owners and operators of hazardous waste treatment, storage, and disposal facilities, including but not limited to:

A. Generators accumulating hazardous waste on-site for periods of less than ninety (90) days;

B. Owners and operators of wastewater treatment units as defined in this rule; and

C. Owners and operators which burn hazardous wastes in incinerators, boilers and industrial furnaces in order to destroy the wastes.

c. Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonement of any emission which is released in any locality in such manner or amount as to cause or contribute to statutory air pollution. Neither does it exempt nor excuse anyone from complying with other

applicable laws, ordinances, regulations, or orders of governmental entities having jurisdiction over hazardous waste treatment, storage or disposal facilities.

d. This rule is promulgated pursuant to W.Va. Code §§22-18-1 et seq., and §§22-5-1 et seq. Recognizing that each Chapter has its own enforcement sections, it is the intent of the Director that enforcement shall be implemented in accordance with W. Va. Code §§22-18-1 et seq., where practicable.

e. Permit applications filed pursuant to this rule shall be processed in accordance with the permitting procedures as set forth in W. Va. Code §§22-18-1 et seq., and this rule.

1.2. Authority. -- W.Va. Code §§22-5-1 et seq. and §§22-18-1 et seq.

1.3. Filing Date. -- April 25, 1996

1.4. Effective Date. -- May 1, 1996

1.5. Incorporation By Reference.

a. This rule incorporates by reference the provisions contained in the Code of Federal Regulations as listed in Table 25-A. Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will for purposes of this rule, be construed as that version which was in effect as of June 1, 1995.

b. This rule also incorporates by reference the provisions contained in 47 CSR 35, effective June 1, 1995.

§45-25-2. Definitions.

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

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

2.3. "Air Pollution Control Equipment" means any equipment used for collecting or converting hazardous waste emissions for the purpose of preventing or reducing emissions of these materials into the open air from hazardous waste treatment, storage, or disposal facilities.

2.4. "BACT", 'Best Available Control Technology' means an emissions limitation based on the maximum degree of reduction for each pollutant which would be emitted from any hazardous waste treatment, storage or disposal facility which the Director, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for

such facility through application of production processes or available methods, systems, or techniques. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

2.5. "CAA" means the federal Clean Air Act, as amended; 42 U.S.C. §7401 et seq.

2.6. "CFR" means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

2.7. "Chief" means the Chief of the West Virginia Office of Air Quality, Division of Environmental Protection.

2.8. "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act), Public Law 92-500, as amended by Public Law 95-217 and Public Law 95-576; 33 U.S. C. §1251 et seq.

2.9. "Director" means the Director of the West Virginia Division of Environmental Protection or his or her designated representative.

2.10. "Division of Environmental Protection or DEP" means that Division of the West Virginia Division of Environmental Protection which is created by the provisions of W. Va. Code §§22-1-1 et seq.

2.11. "EPA" means the United States Environmental Protection Agency.

2.12. "Infectious Medical Waste" shall have the meaning ascribed to it in 64 CSR 56 "Infectious Medical Waste", (June 11, 1993), promulgated by the Division of Health.

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

2.14. "Pathological Waste Incinerator" means an incinerator used to thermally treat infectious medical waste.

2.15. "RCRA" means the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended; 42 U.S.C. §6901 et seq.

2.16. "Steady State" means that all conditions at all points in the thermal treatment process are in stable, normal operating conditions.

2.17. All other words or phrases not herein defined and used in this rule shall have the meaning as ascribed in W. Va. Code §§22-5-1 et seq., or W. Va. Code §§22-18-1 et seq., or 47 CSR 35 "Hazardous Waste Management Regulations" governing the State Hazardous Waste Management Act.

§45-25-3. Adoption By Reference.

3.1. Definitions, lists, tables, appendices, conditions, or requirements from 47 CSR 35 "Hazardous Waste Management Regulations", effective June 1, 1995 are hereby adopted by reference.

a. In case of a conflict between the Office of Air Quality and the Office of Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Director has final administrative authority to resolve the conflict.

3.2. The provisions contained in the Code of Federal Regulations (June 1, 1995), as listed in Table 25-A, are hereby adopted by reference, with the following modifications:

a. Whenever the term "United States" is used it shall also mean the State of West Virginia.

b. Whenever the terms "Administrator" or "Regional Administrator", "The Assistant Administrator for Solid Waste and Emergency Response" or "Director" is used, the term means the Director of the West Virginia Division of Environmental Protection.

c. Whenever the term "Environmental Protection Agency" is used in 40 CFR 266, the term also means the West Virginia Division of Environmental Protection.

d. The distance provisions of 40 CFR 265.382 apply only to the open burning or open detonation of military explosives in a manner that presents an uncontrolled fragment release hazard. The applicable distance provisions of the American Table of Distances for Commercial Explosives, effective June 19, 1991, and of the Department of Defense Contractors Safety Manual for Ammunition and Explosives (DOD 4145.26-M), as amended April 11, 1988, apply otherwise.

§45-25-4. Facility Requirements.

4.1. Owners and operators of hazardous waste treatment, storage, and disposal facilities regulated by the provisions of this rule shall maintain a listing of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the State, where appropriate:

- a. Hazardous Waste Management Program under RCRA and 47 CSR 35;
- b. Prevention of Significant Deterioration (PSD) Program under 45 CSR 14 or the Federal Clean Air Act;
- c. Nonattainment program under West Virginia DEP, Office of Air Quality or the Federal Clean Air Act and 45 CSR 19;
- d. National Emission Standards for Hazardous Pollutants (NESHAP) preconstruction approval under 45 CSR 15 or the Federal Clean Air Act;
- e. Standards of Performance for New Stationary Sources under 45 CSR 16 or the Federal Clean Air Act; and
- f. Other relevant air pollution control permits including local permits.

4.2. Owners and operators of hazardous waste treatment, storage and disposal facilities covered under this rule shall comply with the personnel training requirements as specified by 40 CFR 264.16. An outline of the training program and a description of how the training program is designed to meet actual job tasks must be submitted to the Director with Part B of the permit application.

4.3. Owners and operators of hazardous waste tanks, containers, surface impoundments, landfills, waste piles, land treatment, miscellaneous units, thermal treatment units, incinerators, and boiler and industrial furnace facilities must design, construct, maintain, and operate such facilities to minimize the possibility of a fire, explosion, or any unplanned, sudden, or non-sudden release of hazardous waste constituents to the air which could threaten human health or the environment.

4.4. Owners and operators of hazardous waste management facilities that treat, store, or dispose of ignitable or reactive wastes, or mix incompatible waste or incompatible wastes and other materials, must prevent reactions which:

- a. Produce uncontrolled toxic mists, fumes, dust or gases in sufficient quantities to threaten human health or the environment, and
- b. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion.

4.5. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a container in accordance with the applicable air emission standard requirements of 40 CFR 264 and 265 including but not limited to subpart CC.

4.6. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a tank in accordance with the applicable air emission standard requirements of 40 CFR 264 and 265 including but not limited to subparts AA, BB and CC.

4.7. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable air emission standard requirements of 40 CFR 264 and 265 including but not limited to subpart CC.

4.8. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a miscellaneous unit in accordance with the applicable air pollution standard requirements of 40 CFR 264 including but not limited to subparts AA, BB, and CC.

4.9. A hazardous waste pile must be fully enclosed or otherwise designed to prevent dispersal of the waste by wind.

4.10. Hazardous waste landfills must be covered or otherwise managed to prevent wind dispersal of the waste.

4.11. All landfills, surface impoundments, and land treatment facilities shall be located, designed, constructed, operated, maintained, and closed in a manner that will assure protection of human health and the environment. Protection of human health and the environment shall include prevention of adverse effects on air quality considering:

a. The volume and physical and chemical characteristics of the waste in the facility, including its potential for volatilization and wind dispersal;

b. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

c. The potential for health risks caused by human exposure to waste constituents;

d. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

e. The potential for interference with the enjoyment of life or property; and

f. The persistence and permanence of such potential adverse effects.

4.12. Owners and operators of hazardous waste treatment, storage, or disposal facilities shall utilize best available control technology ("BACT") to limit the discharge of hazardous waste constituents to the atmosphere during:

- a. Process turn-arounds;
- b. Cleaning of process equipment;
- c. Planned process shutdowns; and
- d. Tank truck, railroad tank car, and barge cleaning.

4.13. a. The Director may, on a case-by-case basis, establish performance standards for hazardous waste incinerators for control of emissions of metals, hydrogen halides, and elemental halogen, based on a finding that such standards are necessary to limit the emission rates of these constituents to levels which do not pose an unacceptable risk to human health and environment. The Director may require the following data from the permit applicant:

A. Emissions of POHCs, hazardous combustion by-products, metals and hydrogen halides, including:

- (a) Mass emission rates from the stack, and
- (b) Concentration in the gas stream exiting the stack; and

B. Air dispersion estimates for those substances, including:

- (a) Meteorological data, and
- (b) Description of the air dispersion models, and
- (c) Assumptions underlying the air dispersion models used; and

C. Expected human and environmental exposure, including:

- (a) Topographic considerations,
- (b) Population distributions,
- (c) Population activities, and
- (d) Modes, intensity, and duration of exposure; and

D. Consequences of exposure, including:

- (a) Dose-response curves for carcinogens,
- (b) Health effects based on human or animal studies for other toxic

constituents,

- and
- (c) Potential for accumulation of toxic constituents in the human body,
 - (d) Statements of expected risk to individuals or populations.

4.14. **Emergency Permit.** Notwithstanding any other provision in 40 CFR 270.61, in the event the Director finds an imminent and substantial danger to human health or the environment, the Director may issue a temporary permit to a facility to allow treatment, storage, or disposal of hazardous waste at a non-permitted facility, or hazardous waste not covered by the permit for a facility with an effective permit. This emergency permit:

- a. May be oral or written. If oral, it shall be followed within five (5) days by written emergency permit;
- b. Shall not exceed ninety (90) days in duration;
- c. Shall clearly specify the hazardous wastes to be received, and the manner and location of the treatment, storage, or disposal;
- d. May be terminated by the Director at any time without prior notice if it is determined that termination is appropriate to protect human health or the environment; and
- e. Shall be accompanied by public notice as described under Section 7 of this rule and shall include the following:
 - A. Name and address of the office granting the emergency authorization,
 - B. Name and location of the permitted hazardous waste management facility,
 - C. A brief description of the wastes involved,
 - D. A brief description of the action authorized and reasons for authorizing it,
 - E. Duration of the emergency permit; and
- f. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this rule.

4.15. Pathological Waste Incinerators. The owner and operator of a pathological waste incinerator is not subject to the requirements of this regulation. However, mixtures of infectious medical waste and hazardous waste listed in 40 CFR 261 Subpart D are subject to the requirements of this rule and the owner and operator of such a facility shall design, construct and operate the facility in accordance with all other applicable regulations promulgated by the Director, including, but not limited to, 45 CSR 6 and 45 CSR 13.

§45-25-5. Exclusion and Exemptions.

5.1. Wastes and/or materials excluded in 47 CSR 35, are also excluded from the requirements of this rule, except that mixtures of domestic or industrial sewage and hazardous wastes which pass through a sewer system to a privately owned or publicly owned treatment works are subject to the requirements of this rule.

5.2. Except for recyclable materials exempt pursuant to Section 3 of 47 CSR 35, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of Section 4 of this rule.

§45-25-6. Confidential Information.

6.1. Any records, reports, or information and any permit, permit applications, and related documents within the Director's possession shall be available to the public for inspection and copying: provided, however, that upon satisfactory showing to the Director that such records, reports, permit documentation, or information, or any part thereof would, if made public, divulge methods or processes, or activities, entitled to protection as trade secrets, the Director shall consider, treat, and protect such records as confidential pursuant to W. Va. Code §22-18-1 et seq., and §22-5-1 et seq.

§45-25-7. Public Notice.

Public notice of the preparation of a draft permit shall be given by the methods contained in 47 CSR 35 Section 12. In addition, the owner and operator shall place a Class I legal advertisement in a newspaper of general circulation in accordance with applicable provisions of WV CSR §§45-13-6.1., 6.2., and 6.3.

§45-25-8. Application Fees.

8.1. Any person who applies for a permit for the construction and/or operation of a hazardous waste treatment, storage, or disposal facility shall submit as part of said application a money order or cashier's check payable to the "Hazardous Waste Management Fund" of the State Treasury. Such fee shall be determined by the schedule set forth below:

	ACTIVITY	FEES
a.	Hazardous Waste Management Facilities	
	Treatment design capacity more than 1,000 ton/yr	\$5,000
	Treatment design capacity less than 1,000 ton/yr	\$2,500
b.	Major Modifications or Renewals of Permits for Hazardous Waste Management Facilities	\$1,000

All fees required under this section shall be in addition to fees required under any other rule of the West Virginia Division of Environmental Protection.

§45-25-9. Inconsistency Between Rules.

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

45CSR25

TABLE 25-A

Item No.	CFR No.	Part No.	Subpart No.	Title
1.	40 CFR	264, 265	O	Incinerator
2.		270.19	B	Specific Requirements for
3.	Incinerators	270.62	F	Hazardous Waste Incinerator Permits
4.	40 CFR	264	X	Miscellaneous Units
5.		270.23	B	Specific Requirements for Miscellaneous Units
6.	40 CFR	264, 265	AA	Air Emission Standards for Process Vents
7.		270.24	B	Specific Requirements for Process Vents
8.	40 CFR	264, 265	BB	Air Emission Standards for Equipment Leaks
9.		270.25	B	Specific Requirements for Equipments Leaks
10.	40 CFR	264, 265, 270-	CC	Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers
11.	40 CFR	265	P	Thermal Treatment
12.	40 CFR	266	H	Hazardous Waste Burned in Boilers and Industrial Furnaces
13.		270.22	B	Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
14.		270.66	F	Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
15.	40 CFR	279.23	C	On-site Burning In Space Heater
16.		279.60	G	Standards for Used Oil Burners
17.		279.61		Who Burn Off-Specification Used
18.		279.62		Oil for Energy Recovery
19.		279.63		

SENATE BILL NO. 246

1 (By Senators Ross, Anderson, Boley,
2 Buckalew, Grubb and Macnaughtan)

3 [Introduced January 29, 1996; referred
4 to the Committee on

5 NATURAL RESOURCES

6 [THE JUDICIARY

45-25

7
8
9
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 legislative rules relating to
15 the prevention and control of air pollution from
16 hazardous waste treatment, storage or disposal
17 facilities.

18 Be it enacted by the Legislature of West Virginia:

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

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

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

2 (a) The legislative rules filed in the state register
3 on the twelfth day of August, one thousand nine hundred
4 ninety-four, authorized under the authority of section
5 four, article five, chapter twenty-two, of this code,
6 modified by the division of environmental protection to
7 meet the objections of the legislative rule-making review
8 committee and refiled in the state register on the
9 twenty-third day of November, one thousand nine hundred
10 ninety-four, relating to the division of environmental
11 protection (requirements for determining conformity of
12 general federal actions to applicable air quality
13 implementation plans (general conformity), 45 CSR 35), are
14 authorized.

15 (b) The legislative rules filed in the state register
16 on the twelfth day of August, one thousand nine hundred
17 ninety-four, authorized under the authority of section
18 four, article five, chapter twenty-two, of this code,
19 modified by the division of environmental protection to
20 meet the objections of the legislative rule-making review
21 committee and refiled in the state register on the
22 twenty-third day of November, one thousand nine hundred
23 ninety-four, relating to the division of environmental
24 protection (emission standards for hazardous air pollutants

1 pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

2 ... (c) The legislative rules filed in the state register
3 on the twelfth day of August, one thousand nine hundred
4 ninety-four, authorized under the authority of section
5 five, article twenty, chapter sixteen, of this code,
6 modified by the division of environmental protection to
7 meet the objections of the legislative rule-making review
8 committee and refiled in the state register on the
9 twenty-third day of November, one thousand nine hundred
10 ninety-four, relating to the division of environmental
11 protection (standards of performance for new stationary
12 sources, 45 CSR 16), are authorized with the amendment set
13 forth below:

14 "On page two, section 4, subsection 4.1, subdivision
15 4.1.i, by striking out 'Part 60.195(b)' and inserting in
16 lieu thereof 'Part 60.194(d)';

17 On page two, section 4, subsection 4.1., subdivision
18 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
19 in lieu thereof 'Part 60.335(f)(1)';

20 And,

21 On page two, section 4, after subdivision 'k', by
22 inserting a new subdivision to read as follows:

23 '1. Part 60.335(f)(1).'

24 (d) The legislative rules filed in the state register

1 on the fifteenth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 four, article five, chapter twenty-two, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 nineteenth day of December, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (permits for construction and major modification
10 of major stationary sources of air pollution for the
11 prevention of significant deterioration, 45 CSR 14), are
12 authorized.

13 (e) The legislative rules filed in the state register
14 on the twelfth day of August, one thousand nine hundred
15 ninety-four, authorized under the authority of section
16 four, article five, chapter twenty-two, of this code,
17 modified by the division of environmental protection to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the
20 twenty-third day of November, one thousand nine hundred
21 ninety-four, relating to the division of environmental
22 protection (requirements for determining conformity of
23 transportation plans, programs and projects developed,
24 funded or approved under title 23 U.S.C. or the federal

1 transit act, to applicable air quality implementation
2 plans, 45 CSR 36), are authorized.

3 (f) The legislative rules filed in the state register
4 on the twelfth day of August, one thousand nine hundred
5 ninety-four, authorized under the authority of section
6 four, article five, chapter twenty-two, of this code,
7 modified by the division of environmental protection to
8 meet the objections of the legislative rule-making review
9 committee and refiled in the state register on the twenty-
10 ninth day of December, one thousand nine hundred
11 ninety-four, relating to the division of environmental
12 protection (to prevent and control air pollution from the
13 operation of coal preparation plants and coal handling
14 operations, 45 CSR 5), are authorized.

15 (g) The legislative rules filed in the state register
16 on the ~~thirteenth~~ twenty-eighth day of ~~September~~ July, one
17 thousand nine hundred ~~ninety-four~~ ninety-five, authorized
18 under the authority of section four, article five, chapter
19 twenty-two, of this code, modified by the division of
20 environmental protection to meet the objections of the
21 legislative rule-making review committee and refiled in the
22 state register on the ~~twelfth~~ twenty-seventh day of ~~January~~
23 October, one thousand nine hundred ninety-five, relating to
24 the division of environmental protection (to prevent and

1 control air pollution from hazardous waste treatment,
2 storage or disposal facilities, 45 CSR 25), are authorized.

3 (h) The legislative rules filed in the state register
4 on the twelfth day of August, one thousand nine hundred
5 ninety-four, authorized under the authority of section
6 four, article five, chapter twenty-two, of this code,
7 modified by the division of environmental protection to
8 meet the objections of the legislative rule-making review
9 committee and refiled in the state register on the
10 twenty-third day of November, one thousand nine hundred
11 ninety-four, relating to the division of environmental
12 protection (acid rain provisions and permits, 45 CSR 33),
13 are authorized.

14 (i) The legislative rules filed in the state register
15 on the twelfth day of August, one thousand nine hundred
16 ninety-four, authorized under the authority of section two,
17 article one, chapter twenty-two, of this code, modified by
18 the division of environmental protection to meet the
19 objections of the legislative rule-making review committee
20 and refiled in the state register on the twenty-third day
21 of November, one thousand nine hundred ninety-four,
22 relating to the division of environmental protection
23 (emission standards for hazardous air pollutants pursuant
24 to 40 CFR Part 61, 45 CSR 15), are authorized.

1 (j) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, 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
8 twenty-third day of November, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (provisions for determination of compliance with
11 air quality management rules, 45 CSR 38), are authorized.

12 (k) The legislative rules filed in the state register
13 on the twelfth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section
15 five, article twenty, chapter sixteen, of this code,
16 modified by the division of environmental protection to
17 meet the objections of the legislative rule-making review
18 committee and refiled in the state register on the
19 twenty-third day of November, one thousand nine hundred
20 ninety-four, relating to the division of environmental
21 protection (to prevent and control air pollution from
22 combustion of refuse, 45 CSR 6), are authorized.

23 (l) The legislative rules filed in the state register
24 on the fifteenth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section
2 four, article fourteen, chapter twenty-two, of this code,
3 modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the fourth
6 day of January, one thousand nine hundred ninety-five,
7 relating to the division of environmental protection (dam
8 safety, 47 CSR 34), are authorized with the amendments set
9 forth below:

10 On page 9, section §47-34-3, by striking out
11 3.5.2.c.A, and substituting therefor the following:

12 "3.5.2.c.A. An impoundment exceeding forty (40) feet
13 in height or four hundred (400) acre-feet storage volume
14 shall not be classified as a Class 3 dam."

15 On pages 17 and 18, section §47-34-7, at the end of
16 section 7.1.1.b.C. by adding the following:

17 "The design precipitation for a Class 3 dam may be
18 reduced based on Risk Assessment pursuant to paragraph
19 3.5.4 of this rule, but in no case to less than a P100
20 rainfall of six (6) hours in duration."

21 On page 40, section §47-34-13, by striking out section
22 13.2 and substituting therefor the following:

23 "Performance Requirements - All dams completed before
24 July 1, 1973, shall meet the applicable design requirements

1 of Section 7 of this rule. Those dams which do not meet
2 the applicable design requirement of Section 7 of this rule
3 shall be modified, breached, removed, or properly abandoned
4 pursuant to the provisions of this rule. In developing the
5 required plans, specifications, and documentation necessary
6 to bring the structure into conformity with section 7 of
7 this rule, the design engineer may consider in his
8 submitted analyses, peculiarities and local conditions for
9 each impounding structure with recognition of the many
10 factors involved, some of which may not be precisely known.
11 Existing construction documentation and the historical
12 performance of the structure including documented storms
13 and spillway flows may be considered by the engineer as
14 part of the evaluation of the structure. Upon approval by
15 the Director of the plans, specifications, and
16 documentation submitted by the engineer, the Director may
17 issue a certificate of approval."

18 (m) The legislative rules filed in the state register
19 on the fifteenth day of August, one thousand nine hundred
20 ninety-four, authorized under the authority of section
21 fifteen, article one, chapter twenty-two, of this code,
22 modified by the division of environmental protection to
23 meet the objections of the legislative rule-making review
24 committee and refiled in the state register on the eleventh

1 day of January, one thousand nine hundred ninety-five,
2 relating to the division of environmental protection
3 (regulations governing environmental laboratories
4 certification and standards of performance, 47 CSR 32), are
5 authorized.

6 (n) The legislative rules filed in the state register
7 on the twenty-eighth day of February, one thousand nine
8 hundred ninety-four, authorized under the authority of
9 section three, article two, chapter twenty-two-c, of this
10 code, modified by the division of environmental protection
11 to meet the objections of the legislative rule-making
12 review committee and refiled in the state register on the
13 twenty-eighth day of July, one thousand nine hundred
14 ninety-four, relating to the division of environmental
15 protection (state water pollution control revolving fund
16 program, 47 CSR 31), are authorized.

17 (o) The legislative rules filed in the state register
18 on the fifteenth day of August, one thousand nine hundred
19 ninety-four, authorized under the authority of section six,
20 article seventeen, chapter twenty-two, of this code,
21 relating to the division of environmental protection
22 (underground storage tanks, 47 CSR 36), are authorized.

23 (p) The legislative rules filed in the state register
24 on the fifteenth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section six,
2 article eighteen, chapter twenty-two, of this code,
3 modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 thirteenth day of January, one thousand nine hundred
7 ninety-five, relating to the division of environmental
8 protection (hazardous waste management regulations, 47 CSR
9 35), are authorized.

10 (g) The legislative rules filed in the state register
11 on the twenty-second day of July, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 four, article three, chapter twenty-two, of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the
17 twenty-ninth day of August, one thousand nine hundred
18 ninety-four, relating to the division of environmental
19 protection (standards for certification of blasters-surface
20 coal mines, 38 CSR 2C), are authorized with the amendments
21 set forth below:

22 On page 4, section 38.2C.4, after the words "Form
23 MR-30-TR." by inserting a second paragraph to read as
24 follows:

1 "In lieu of completing the training program, the
2 applicant for certification or re-certification may
3 complete a self-study course using the study guide and
4 other materials available from the Division of
5 Environmental Protection."

6 On page 8, subsection 8.2, after the words "refresher
7 training course" by inserting the phrase "or complete the
8 self-study course."

9 On page 8 at subsection 10.1 by striking out the
10 phrase "a cessation order and/or take other action as
11 provided in West Virginia Code 22-3-16 and 17" and the
12 phrase "the provisions of West Virginia Code 22-3-1 et
13 seq., rules promulgated under that article, or".

14 On page 9, subsection 11.1, by striking out the
15 subsection and inserting in lieu thereof a new subsection
16 to read as follows: "11.1. **Suspension** - Upon service of a
17 written notice of violation by the Director to a certified
18 blaster, the Director may suspend his or her certification.
19 Prior to the issuance of such an order, the certified
20 blaster shall be granted a hearing before the Director to
21 show cause why his or her certification should not be
22 suspended."

23 On page 9, subsection 11.2, by striking out the phrase
24 "or cessation order" in the first sentence.

1 On page 9, Section 12, by striking out the phrase
2 "cessation order".

3 (r) The legislative rules filed in the state register
4 on the fifteenth day of August, one thousand nine hundred
5 ninety-four, authorized under the authority of section
6 nine, article three, chapter twenty-two, of this code,
7 modified by the division of environmental protection to
8 meet the objections of the legislative rule-making review
9 committee and refiled in the state register on the sixth
10 day of January, one thousand nine hundred ninety-five,
11 relating to the division of environmental protection (rules
12 and regulations relating to abandoned mine lands and
13 reclamation, 38 CSR 2D), are authorized.

14 (s) The Legislature hereby authorizes and directs the
15 division of environmental protection to promulgate the
16 legislative rules filed in the state register on February,
17 seventh, one thousand nine hundred ninety-five, authorized
18 under the authority of section five, article twenty,
19 chapter sixteen, of this code, relating to the division of
20 environmental protection (prevention and control of
21 particulate air pollution from combustion of fuel in
22 indirect heat exchangers, 45 CSR 2), effective the first
23 day of May, one thousand nine hundred ninety-five, with the
24 amendments set forth below:

1 On page eight, section 3.4(e) after the word "operated" by
2 adding the words "at normal operating loads";

3 And,

4 On page thirteen, section 9.4 by striking the words
5 "monthly or", and, following the words "quarterly basis" by
6 striking the word "as"; and by inserting the words "unless
7 otherwise" following the words "quarterly basis".

8 And,

9 On page thirteen, by creating a new section, designated
10 section "45.2.10. Variances.

11 10.1. In the event of an unavoidable shortage of fuel
12 having characteristics or specifications necessary for a
13 fuel burning unit to comply with the opacity standards set
14 forth in section 3 or any emergency situation or condition
15 creating a threat to public safety or welfare, the Director
16 may grant an exception to the otherwise applicable visible
17 emission standards for a period not to exceed fifteen (15)
18 days, provided that visible emissions during the exception
19 period do not exceed a maximum six (6) minute average of
20 thirty (30) percent and that a reasonable demonstration is
21 made by the owner or operator that the emission standards
22 under section 4 of this rule will not be exceeded during
23 the exemption period."

24 10.2. In the event a fuel burning unit employing a

1 flue gas desulphurization system must by-pass such system
2 because of necessary planned or unplanned maintenance,
3 visible emissions may not exceed twenty percent (20%)
4 opacity during such period of maintenance. The Director
5 may require advance notice of necessary planned
6 maintenance, including a description of the necessity of
7 the maintenance activity and its expected duration and may
8 limit the duration of the variance or the amount of the
9 excess opacity exception herein allowed. The Director
10 shall be notified of unplanned maintenance and may limit
11 the duration of the variance or the amount of excess
12 opacity exception allowed during unplanned maintenance.

13 And, by renumbering subsequent sections.

14 (t) The legislative rules filed in the state register
15 on the nineteenth day of August, one thousand nine hundred
16 ninety-four, authorized under the authority of section
17 four, article three, chapter twenty-two, of this code,
18 relating to the division of environmental protection
19 (surface mining and reclamation regulations, 38 CSR 2), are
20 authorized "with the amendments set forth below"

21 On pages 2 and 3, by striking out subsections 1.6, 1.7
22 and 1.8 in their entirety;

23 On page 6, by inserting a new subsection 2.20, to read
24 as follows, and renumbering subsequent subsections;

1 "Chemical Treatment means - the treatment of water
2 from a surface coal mining operation using chemical
3 reagents such as but not limited to sodium hydroxide,
4 calcium carbonate, or anhydrous ammonia for purposes of
5 meeting applicable state and federal effluent limitations.
6 Chemical treatment does not include passive treatment
7 systems such as but not limited to limestone drains,
8 wetlands, alkaline addition, application of flyash,
9 agricultural lime, or injection of flyash, limestone, or
10 other minerals into underground coal operations."

11 On page 16, section 2, by striking out subsection 2.92
12 and renumbering the subsequent subsections.

13 On page 25, by striking the second paragraph of
14 subsection 3.1 (o) and inserting in lieu thereof a new
15 second paragraph 3.1 of subsection 3.1 (o), to read as
16 follows: "Any permit application which references an
17 approved centralized ownership and control file may be
18 determined to be complete and accurate for the purposes of
19 this subsection. Each centralized ownership and control
20 file shall at a minimum:"

21 On page 63, by striking out subsection 3.25 (e).

22 On page 63, by striking out the first sentence in
23 subsection 3.26, and inserting in lieu thereof the
24 following:

1 "(a) All changes including name changes, replacements,
2 and additions to the ownership or control data relative to
3 a permittee or assignee who will function as an operator
4 pursuant to the provisions of paragraph (c) of subsection
5 3.25 of this rule shall be reported to the Director."

6 On page 64, after subsection 3.26 (a) (5) by inserting
7 a new subsection 3.26 (a) (6) to read as follows:

8 "(6) In the event that a permittee or operator has
9 incurred no changes in its ownership and control
10 information and therefore has not been obligated to file
11 a report within any consecutive twelve-month period, that
12 permittee or operator is required to notify the Director in
13 writing that no changes to the information required by
14 paragraphs (b), (c), (d) and (i) of subsection 3.1 of this
15 rule have occurred."

16 On page 64, by striking out subsection 3.27 (a) and
17 inserting in lieu thereof the following:

18 "(a) All active surface mining operations shall be
19 subject to the renewal requirements and provisions for
20 issuance of a renewal discussed in Section 19 of the Act:
21 *Provided*, That the Director may waive the requirement for
22 renewal if the permittee certifies in writing that all coal
23 extraction is completed, that all backfilling and regrading
24 will be completed within sixty (60) days prior to the

1 expiration date of the permit, and that an application for
2 Phase I bond release will be filed prior to the expiration
3 date of the permit. Failure of the permittee complete
4 backfilling and regrading within sixty (60) days prior to
5 the expiration date of the permit will nullify the waiver.

6 Those operations which have been granted inactive
7 status in accordance with subsection 14.11 of this rule
8 shall also be subject to the renewal requirements of
9 Section 19 of the Act.

10 Applications for renewal shall be filed on forms
11 provided by the Director and shall contain at a minimum the
12 following information:"

13 On page 79, by striking out subsection 3.32 (i) and
14 renumbering the remaining subsections.

15 On page 80, subsection 3.34 (b) after the word
16 "criteria" by inserting the words "paragraph (b) of
17 subsection 3.32 of this section";

18 On page 80, by striking out subsection 3.34 (b) (3)
19 and substituting therefor a new subsection 3.34 (b) (3), to
20 read as follows: "(3) The permittee was linked to a
21 violation, penalty or fee through ownership or control,
22 under the violation review criteria, paragraph (b) of
23 subsection 3.32 of this section at the time the permit was
24 issued and an ownership or control link between the

1 permittee and the person responsible for the violation,
2 penalty or fee still exists, or when the link was severed
3 the permittee continues to be responsible for the
4 violation, penalty or fee."

5 On page 82, by striking out subsection 3.34 (g) and
6 substituting therefor a new subparagraph (g) to read as
7 follows:

8 "(g) For purposes of this subsection, a permit is
9 issued when it is originally approved, as well as when a
10 transfer, assignment, or sale of permit rights is approved
11 pursuant to paragraphs (a) or (c), subsection 3.25 of this
12 rule, or where a permit is revised pursuant to subsection
13 3.26 of this rule."

14 On page 86, at the end of subsection 4.4, by adding
15 the following sentence: "Prospecting roads are to be
16 designed, constructed, maintained, and reclaimed in
17 accordance with the provisions of subsection 13.6 of this
18 rule."

19 On page 88, by inserting a new subsection 4.7 (a) (1)
20 to read as follows: (1) Minimize downstream sedimentation
21 and flooding and renumbering the remaining subsections.

22 On page 92, subsection 4.12, by inserting a new
23 sentence between the second and third sentence which reads
24 as follows: "Where the certification statement indicates a

1 change from the design standards or construction
2 requirements approved in the permit, such changes will be
3 documented in as-built plans and submitted for approval to
4 the Director as a permit revision."

5 On Page 148, section 11.6 (a) in the underscored
6 language, after the word, "completed" by inserting the
7 words "or nearly completed".

8 On Page 223, by striking out subsection 14.14 (g) (8)
9 and inserting in lieu thereof a new subsection 14.14 (g)
10 (8), to read as follows: "(8) Surface water runoff from
11 areas above and adjacent to the fill shall be diverted into
12 properly designed and constructed stabilized diversion
13 channels which have been designed using best current
14 technology to safely pass the peak runoff from a 100 year,
15 24-hour precipitation event. The channel shall be designed
16 and constructed to ensure stability of the fill, control
17 erosion, and minimize water infiltration into the fill."

18 On Page 232, by inserting a new subsection, designated
19 subsection 14.19 (d) to read as follows: "(d) Timber from
20 clearing and grubbing operations may be wind-rowed below
21 the projected toe of the outslope in a manner that will
22 provide shelter and habitat for game and non-game wildlife
23 and provide for enhanced sediment control. These materials
24 may not be placed in natural water courses or where they

1 will be covered by spoil material at the toe of the
2 outslope. The wind-rows must be of relatively uniform
3 height and width and must be more or less evenly
4 distributed along the lower reaches and within the permit
5 area."

6 On Page 240, subsection 17.1, in the first sentence,
7 after the words "mining and reclamation," by striking out
8 the remainder of the paragraph and substituting therefor
9 the following: "required by the Act and these Rules,
10 including the engineering analyses and designs; the
11 development of cross-section maps and plans; the geologic
12 drilling and statement of results of test borings and core
13 samplings; preblast surveys; the collection of
14 site-specific resource information and production of
15 protection and enhancement plans for fish and wildlife
16 habitats and other environmental values; and the collection
17 of archaeological and historical information; and any other
18 archaeological and historical information required by the
19 federal department of the interior and the preparation of
20 plans that may be necessitated thereby; and the director
21 shall provide or assume the cost of training coal operators
22 that meet the qualifications concerning the preparation of
23 permit applications and compliance with the regulatory
24 program, and shall ensure that qualified coal operators are

1 aware of the assistance available under this section.

2 On Page 240, subsection 17.1, after the first
3 paragraph by inserting a new paragraph, to read as follows:
4 "The Director will develop a procedure for the interstate
5 coordination and exchange of information collected under
6 the Small Operators Assistance Program."

7 On Page 241, by striking out subsection 17.4 in its
8 entirety and substituting therefor the following: "17.4
9 Request for Assistance. Each applicant requesting
10 assistance shall provide information on forms provided by
11 the director in an application that shall be clear and
12 concise and shall be provided in a format prescribed by the
13 Director and/or a format required by the Federal Office of
14 Surface Mining Reclamation and Enforcement."

15 On Page 249, subsection 17.7 (a) (4), after the words
16 "twelve (12) month period" by striking the remainder of the
17 sentence and inserting in lieu thereof the words
18 "immediately following permit issuance."

19 On page 273, subsection 20.6 (a), after the word
20 "first" by striking out the words "thirty (30)" and
21 inserting in lieu thereof the word "fifteen".

22 On page 273, subsection 20.6 (c), after the words
23 "date of the" by striking out the words "Assessment Officer
24 receiving the

1 finding specified in paragraph (a) of this subsection." and
2 inserting in lieu thereof the words "issuance of a notice
3 or order";

4 On page 274, subsection 20.6 (d), by striking out the
5 first sentence, and inserting in lieu thereof the
6 following: "The time and place of an informal assessment
7 conference shall be posted at the Department of
8 Environmental Protection Office nearest to the operation.

9

10 NOTE: The purpose of this bill is to authorize the
11 Division of Environmental Protection to promulgate
12 legislative rules relating to the prevention and control of
13 air pollution from hazardous waste treatment, storage or
14 disposal facilities.

15

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

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H. B. 4249

(By ~~Delegates Douglas, Gallagher, Faircloth, Compton,~~
~~Linch and Riggs~~),
(Introduced January 29, 1996; referred to the
Committee on the Judiciary).

45-25

A BILL to amend and reenact section one, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of environmental protection to promulgate legislative rules relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities.

Be it enacted by the Legislature of West Virginia:

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

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

4249

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

2 (a) The legislative rules filed in the state register
3 on the twelfth day of August, one thousand nine hundred
4 ninety-four, authorized under the authority of section
5 four, article five, chapter twenty-two, of this code,
6 modified by the division of environmental protection to
7 meet the objections of the legislative rule-making review
8 committee and refiled in the state register on the
9 twenty-third day of November, one thousand nine hundred
10 ninety-four, relating to the division of environmental
11 protection (requirements for determining conformity of
12 general federal actions to applicable air quality
13 implementation plans (general conformity), 45 CSR 35), are
14 authorized.

15 (b) The legislative rules filed in the state register
16 on the twelfth day of August, one thousand nine hundred
17 ninety-four, authorized under the authority of section
18 four, article five, chapter twenty-two, of this code,
19 modified by the division of environmental protection to
20 meet the objections of the legislative rule-making review
21 committee and refiled in the state register on the
22 twenty-third day of November, one thousand nine hundred
23 ninety-four, relating to the division of environmental
24 protection (emission standards for hazardous air pollutants

1 pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

2 (c) The legislative rules filed in the state register
3 on the twelfth day of August, one thousand nine hundred
4 ninety-four, authorized under the authority of section
5 five, article twenty, chapter sixteen, of this code,
6 modified by the division of environmental protection to
7 meet the objections of the legislative rule-making review
8 committee and refiled in the state register on the
9 twenty-third day of November, one thousand nine hundred
10 ninety-four, relating to the division of environmental
11 protection (standards of performance for new stationary
12 sources, 45 CSR 16), are authorized with the amendment set
13 forth below:

14 "On page two, section 4, subsection 4.1, subdivision
15 4.1.i, by striking out 'Part 60.195(b)' and inserting in
16 lieu thereof 'Part 60.194(d)';

17 On page two, section 4, subsection 4.1., subdivision
18 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
19 in lieu thereof 'Part 60.335(f)(1)';

20 And,

21 On page two, section 4, after subdivision 'k', by
22 inserting a new subdivision to read as follows:

23 "1. Part 60.335(f)(1)."

24 (d) The legislative rules filed in the state register

1 on the fifteenth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 four, article five, chapter twenty-two, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 nineteenth day of December, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (permits for construction and major modification
10 of major stationary sources of air pollution for the
11 prevention of significant deterioration, 45 CSR 14), are
12 authorized.

13 (e) The legislative rules filed in the state register
14 on the twelfth day of August, one thousand nine hundred
15 ninety-four, authorized under the authority of section
16 four, article five, chapter twenty-two, of this code,
17 modified by the division of environmental protection to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the
20 twenty-third day of November, one thousand nine hundred
21 ninety-four, relating to the division of environmental
22 protection (requirements for determining conformity of
23 transportation plans, programs and projects developed,
24 funded or approved under title 23 U.S.C. or the federal

1 transit act, to applicable air quality implementation
2 plans, 45 CSR 36), are authorized.

3 (f) The legislative rules filed in the state register
4 on the twelfth day of August, one thousand nine hundred
5 ninety-four, authorized under the authority of section
6 four, article five, chapter twenty-two, of this code,
7 modified by the division of environmental protection to
8 meet the objections of the legislative rule-making review
9 committee and refiled in the state register on the twenty-
10 ninth day of December, one thousand nine hundred
11 ninety-four, relating to the division of environmental
12 protection (to prevent and control air pollution from the
13 operation of coal preparation plants and coal handling
14 operations, 45 CSR 5), are authorized.

15 (g) The legislative rules filed in the state register
16 on the ~~thirteenth~~ twenty-eighth day of ~~September~~ July, one
17 thousand nine hundred ~~ninety-four~~ ninety-five, authorized
18 under the authority of section four, article five, chapter
19 twenty-two, of this code, modified by the division of
20 environmental protection to meet the objections of the
21 legislative rule-making review committee and refiled in the
22 state register on the ~~twelfth~~ twenty-seventh day of ~~January~~
23 October, one thousand nine hundred ninety-five, relating to
24 the division of environmental protection (to prevent and

1 control air pollution from hazardous waste treatment,
2 storage or disposal facilities, 45 CSR 25), are authorized.

3 (h) The legislative rules filed in the state register
4 on the twelfth day of August, one thousand nine hundred
5 ninety-four, authorized under the authority of section
6 four, article five, chapter twenty-two, of this code,
7 modified by the division of environmental protection to
8 meet the objections of the legislative rule-making review
9 committee and refiled in the state register on the
10 twenty-third day of November, one thousand nine hundred
11 ninety-four, relating to the division of environmental
12 protection (acid rain provisions and permits, 45 CSR 33),
13 are authorized.

14 (i) The legislative rules filed in the state register
15 on the twelfth day of August, one thousand nine hundred
16 ninety-four, authorized under the authority of section two,
17 article one, chapter twenty-two, of this code, modified by
18 the division of environmental protection to meet the
19 objections of the legislative rule-making review committee
20 and refiled in the state register on the twenty-third day
21 of November, one thousand nine hundred ninety-four,
22 relating to the division of environmental protection
23 (emission standards for hazardous air pollutants pursuant
24 to 40 CFR Part 61, 45 CSR 15), are authorized.

1 (j) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, 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
8 twenty-third day of November, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (provisions for determination of compliance with
11 air quality management rules, 45 CSR 38), are authorized.

12 (k) The legislative rules filed in the state register
13 on the twelfth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section
15 five, article twenty, chapter sixteen, of this code,
16 modified by the division of environmental protection to
17 meet the objections of the legislative rule-making review
18 committee and refiled in the state register on the
19 twenty-third day of November, one thousand nine hundred
20 ninety-four, relating to the division of environmental
21 protection (to prevent and control air pollution from
22 combustion of refuse, 45 CSR 6), are authorized.

23 (l) The legislative rules filed in the state register
24 on the fifteenth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section
2 four, article fourteen, chapter twenty-two, of this code,
3 modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the fourth
6 day of January, one thousand nine hundred ninety-five,
7 relating to the division of environmental protection (dam
8 safety, 47 CSR 34), are authorized with the amendments set
9 forth below:

10 On page 9, section §47-34-3, by striking out
11 3.5.2.c.A, and substituting therefor the following:

12 "3.5.2.c.A. An impoundment exceeding forty (40) feet
13 in height or four hundred (400) acre-feet storage volume
14 shall not be classified as a Class 3 dam."

15 On pages 17 and 18, section §47-34-7, at the end of
16 section 7.1.1.b.C. by adding the following:

17 "The design precipitation for a Class 3 dam may be
18 reduced based on Risk Assessment pursuant to paragraph
19 3.5.4 of this rule, but in no case to less than a P100
20 rainfall of six (6) hours in duration."

21 On page 40, section §47-34-13, by striking out section
22 13.2 and substituting therefor the following:

23 "Performance Requirements - All dams completed before
24 July 1, 1973, shall meet the applicable design requirements

1 of Section 7 of this rule. Those dams which do not meet
2 the applicable design requirement of Section 7 of this rule
3 shall be modified, breached, removed, or properly abandoned
4 pursuant to the provisions of this rule. In developing the
5 required plans, specifications, and documentation necessary
6 to bring the structure into conformity with section 7 of
7 this rule, the design engineer may consider in his
8 submitted analyses, peculiarities and local conditions for
9 each impounding structure with recognition of the many
10 factors involved, some of which may not be precisely known.
11 Existing construction documentation and the historical
12 performance of the structure including documented storms
13 and spillway flows may be considered by the engineer as
14 part of the evaluation of the structure. Upon approval by
15 the Director of the plans, specifications, and
16 documentation submitted by the engineer, the Director may
17 issue a certificate of approval."

18 (m) The legislative rules filed in the state register
19 on the fifteenth day of August, one thousand nine hundred
20 ninety-four, authorized under the authority of section
21 fifteen, article one, chapter twenty-two, of this code,
22 modified by the division of environmental protection to
23 meet the objections of the legislative rule-making review
24 committee and refiled in the state register on the eleventh

1 day of January, one thousand nine hundred ninety-five,
2 relating to the division of environmental protection
3 (regulations governing environmental laboratories
4 certification and standards of performance, 47 CSR 32), are
5 authorized.

6 (n) The legislative rules filed in the state register
7 on the twenty-eighth day of February, one thousand nine
8 hundred ninety-four, authorized under the authority of
9 section three, article two, chapter twenty-two-c, of this
10 code, modified by the division of environmental protection
11 to meet the objections of the legislative rule-making
12 review committee and refiled in the state register on the
13 twenty-eighth day of July, one thousand nine hundred
14 ninety-four, relating to the division of environmental
15 protection (state water pollution control revolving fund
16 program, 47 CSR 31), are authorized.

17 (o) The legislative rules filed in the state register
18 on the fifteenth day of August, one thousand nine hundred
19 ninety-four, authorized under the authority of section six,
20 article seventeen, chapter twenty-two, of this code,
21 relating to the division of environmental protection
22 (underground storage tanks, 47 CSR 36), are authorized.

23 (p) The legislative rules filed in the state register
24 on the fifteenth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section six,
2 article eighteen, chapter twenty-two, of this code,
3 modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 thirteenth day of January, one thousand nine hundred
7 ninety-five, relating to the division of environmental
8 protection (hazardous waste management regulations, 47 CSR
9 35), are authorized.

10 (g) The legislative rules filed in the state register
11 on the twenty-second day of July, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 four, article three, chapter twenty-two, of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the
17 twenty-ninth day of August, one thousand nine hundred
18 ninety-four, relating to the division of environmental
19 protection (standards for certification of blasters-surface
20 coal mines, 38 CSR 2C), are authorized with the amendments
21 set forth below:

22 On page 4, section 38.2C.4, after the words "Form
23 MR-30-TR." by inserting a second paragraph to read as
24 follows:

1 "In lieu of completing the training program, the
2 applicant for certification or re-certification may
3 complete a self-study course using the study guide and
4 other materials available from the Division of
5 Environmental Protection."

6 On page 8, subsection 8.2, after the words "refresher
7 training course" by inserting the phrase "or complete the
8 self-study course."

9 On page 8 at subsection 10.1 by striking out the
10 phrase "a cessation order and/or take other action as
11 provided in West Virginia Code 22-3-16 and 17" and the
12 phrase "the provisions of West Virginia Code 22-3-1 et
13 seq., rules promulgated under that article, or".

14 On page 9, subsection 11.1, by striking out the
15 subsection and inserting in lieu thereof a new subsection
16 to read as follows: "11.1. **Suspension** - Upon service of a
17 written notice of violation by the Director to a certified
18 blaster, the Director may suspend his or her certification.
19 Prior to the issuance of such an order, the certified
20 blaster shall be granted a hearing before the Director to
21 show cause why his or her certification should not be
22 suspended."

23 On page 9, subsection 11.2, by striking out the phrase
24 "or cessation order" in the first sentence.

1 On page 9, Section 12, by striking out the phrase
2 "cessation order".

3 (r) The legislative rules filed in the state register
4 on the fifteenth day of August, one thousand nine hundred
5 ninety-four, authorized under the authority of section
6 nine, article three, chapter twenty-two, of this code,
7 modified by the division of environmental protection to
8 meet the objections of the legislative rule-making review
9 committee and refiled in the state register on the sixth
10 day of January, one thousand nine hundred ninety-five,
11 relating to the division of environmental protection (rules
12 and regulations relating to abandoned mine lands and
13 reclamation, 38 CSR 2D), are authorized.

14 (s) The Legislature hereby authorizes and directs the
15 division of environmental protection to promulgate the
16 legislative rules filed in the state register on February,
17 seventh, one thousand nine hundred ninety-five, authorized
18 under the authority of section five, article twenty,
19 chapter sixteen, of this code, relating to the division of
20 environmental protection (prevention and control of
21 particulate air pollution from combustion of fuel in
22 indirect heat exchangers, 45 CSR 2), effective the first
23 day of May, one thousand nine hundred ninety-five, with the
24 amendments set forth below:

1 On page eight, section 3.4(e) after the word "operated" by
2 adding the words "at normal operating loads";

3 And,

4 On page thirteen, section 9.4 by striking the words
5 "monthly or", and, following the words "quarterly basis" by
6 striking the word "as"; and by inserting the words "unless
7 otherwise" following the words "quarterly basis".

8 And,

9 On page thirteen, by creating a new section, designated
10 section "45.2.10. Variances.

11 10.1. In the event of an unavoidable shortage of fuel
12 having characteristics or specifications necessary for a
13 fuel burning unit to comply with the opacity standards set
14 forth in section 3 or any emergency situation or condition
15 creating a threat to public safety or welfare, the Director
16 may grant an exception to the otherwise applicable visible
17 emission standards for a period not to exceed fifteen (15)
18 days, provided that visible emissions during the exception
19 period do not exceed a maximum six (6) minute average of
20 thirty (30) percent and that a reasonable demonstration is
21 made by the owner or operator that the emission standards
22 under section 4 of this rule will not be exceeded during
23 the exemption period."

24 10.2. In the event a fuel burning unit employing a

1 flue gas desulphurization system must by-pass such system
2 because of necessary planned or unplanned maintenance,
3 visible emissions may not exceed twenty percent (20%)
4 opacity during such period of maintenance. The Director
5 may require advance notice of necessary planned
6 maintenance, including a description of the necessity of
7 the maintenance activity and its expected duration and may
8 limit the duration of the variance or the amount of the
9 excess opacity exception herein allowed. The Director
10 shall be notified of unplanned maintenance and may limit
11 the duration of the variance or the amount of excess
12 opacity exception allowed during unplanned maintenance.

13 And, by renumbering subsequent sections.

14 (t) The legislative rules filed in the state register
15 on the nineteenth day of August, one thousand nine hundred
16 ninety-four, authorized under the authority of section
17 four, article three, chapter twenty-two, of this code,
18 relating to the division of environmental protection
19 (surface mining and reclamation regulations, 38 CSR 2), are
20 authorized "with the amendments set forth below"

21 On pages 2 and 3, by striking out subsections 1.6, 1.7
22 and 1.8 in their entirety;

23 On page 6, by inserting a new subsection 2.20, to read
24 as follows, and renumbering subsequent subsections;

1 "Chemical Treatment means = the treatment of water
2 from a surface coal mining operation using chemical
3 reagents such as but not limited to sodium hydroxide,
4 calcium carbonate, or anhydrous ammonia for purposes of
5 meeting applicable state and federal effluent limitations.
6 Chemical treatment does not include passive treatment
7 systems such as but not limited to limestone drains,
8 wetlands, alkaline addition, application of flyash,
9 agricultural lime, or injection of flyash, limestone, or
10 other minerals into underground coal operations."

11 On page 16, section 2, by striking out subsection 2.92
12 and renumbering the subsequent subsections.

13 On page 25, by striking the second paragraph of
14 subsection 3.1 (o) and inserting in lieu thereof a new
15 second paragraph 3.1 of subsection 3.1 (o), to read as
16 follows: "Any permit application which references an
17 approved centralized ownership and control file may be
18 determined to be complete and accurate for the purposes of
19 this subsection. Each centralized ownership and control
20 file shall at a minimum:"

21 On page 63, by striking out subsection 3.25 (e).

22 On page 63, by striking out the first sentence in
23 subsection 3.26, and inserting in lieu thereof the
24 following:

1 "(a) All changes including name changes, replacements,
2 and additions to the ownership or control data relative to
3 a permittee or assignee who will function as an operator
4 pursuant to the provisions of paragraph (c) of subsection
5 3.25 of this rule shall be reported to the Director."

6 On page 64, after subsection 3.26 (a) (5) by inserting
7 a new subsection 3.26 (a) (6) to read as follows:

8 "(6) In the event that a permittee or operator has
9 incurred no changes in its ownership and control
10 information and therefore has not been obligated to file
11 a report within any consecutive twelve-month period, that
12 permittee or operator is required to notify the Director in
13 writing that no changes to the information required by
14 paragraphs (b), (c), (d) and (i) of subsection 3.1 of this
15 rule have occurred."

16 On page 64, by striking out subsection 3.27 (a) and
17 inserting in lieu thereof the following:

18 "(a) All active surface mining operations shall be
19 subject to the renewal requirements and provisions for
20 issuance of a renewal discussed in Section 19 of the Act:
21 *Provided*, That the Director may waive the requirement for
22 renewal if the permittee certifies in writing that all coal
23 extraction is completed, that all backfilling and regrading
24 will be completed within sixty (60) days prior to the

1 expiration date of the permit, and that an application for
2 Phase I bond release will be filed prior to the expiration
3 date of the permit. Failure of the permittee complete
4 backfilling and regrading within sixty (60) days prior to
5 the expiration date of the permit will nullify the waiver.

6 Those operations which have been granted inactive
7 status in accordance with subsection 14.11 of this rule
8 shall also be subject to the renewal requirements of
9 Section 19 of the Act.

10 Applications for renewal shall be filed on forms
11 provided by the Director and shall contain at a minimum the
12 following information:"

13 On page 79, by striking out subsection 3.32 (i) and
14 renumbering the remaining subsections.

15 On page 80, subsection 3.34 (b) after the word
16 "criteria" by inserting the words "paragraph (b) of
17 subsection 3.32 of this section";

18 On page 80, by striking out subsection 3.34 (b) (3)
19 and substituting therefor a new subsection 3.34 (b) (3), to
20 read as follows: "(3) The permittee was linked to a
21 violation, penalty or fee through ownership or control,
22 under the violation review criteria, paragraph (b) of
23 subsection 3.32 of this section at the time the permit was
24 issued and an ownership or control link between the

1 permittee and the person responsible for the violation,
2 penalty or fee still exists, or when the link was severed
3 the permittee continues to be responsible for the
4 violation, penalty or fee."

5 On page 82, by striking out subsection 3.34 (g) and
6 substituting therefor a new subparagraph (g) to read as
7 follows:

8 "(g) For purposes of this subsection, a permit is
9 issued when it is originally approved, as well as when a
10 transfer, assignment, or sale of permit rights is approved
11 pursuant to paragraphs (a) or (c), subsection 3.25 of this
12 rule, or where a permit is revised pursuant to subsection
13 3.26 of this rule."

14 On page 86, at the end of subsection 4.4, by adding
15 the following sentence: "Prospecting roads are to be
16 designed, constructed, maintained, and reclaimed in
17 accordance with the provisions of subsection 13.6 of this
18 rule."

19 On page 88, by inserting a new subsection 4.7 (a) (1)
20 to read as follows: (1) Minimize downstream sedimentation
21 and flooding and renumbering the remaining subsections.

22 On page 92, subsection 4.12, by inserting a new
23 sentence between the second and third sentence which reads
24 as follows: "Where the certification statement indicates a

1 change from the design standards or construction
2 requirements approved in the permit, such changes will be
3 documented in as-built plans and submitted for approval to
4 the Director as a permit revision."

5 On Page 148, section 11.6 (a) in the underscored
6 language, after the word, "completed" by inserting the
7 words "or nearly completed".

8 On Page 223, by striking out subsection 14.14 (g) (8)
9 and inserting in lieu thereof a new subsection 14.14 (g)
10 (8), to read as follows: "(8) Surface water runoff from
11 areas above and adjacent to the fill shall be diverted into
12 properly designed and constructed stabilized diversion
13 channels which have been designed using best current
14 technology to safely pass the peak runoff from a 100 year,
15 24-hour precipitation event. The channel shall be designed
16 and constructed to ensure stability of the fill, control
17 erosion, and minimize water infiltration into the fill."

18 On Page 232, by inserting a new subsection, designated
19 subsection 14.19 (d) to read as follows: "(d) Timber from
20 clearing and grubbing operations may be wind-rowed below
21 the projected toe of the outslope in a manner that will
22 provide shelter and habitat for game and non-game wildlife
23 and provide for enhanced sediment control. These materials
24 may not be placed in natural water courses or where they

1 will be covered by spoil material at the toe of the
2 outslope. The wind-rows must be of relatively uniform
3 height and width and must be more or less evenly
4 distributed along the lower reaches and within the permit
5 area."

6 On Page 240, subsection 17.1, in the first sentence,
7 after the words "mining and reclamation," by striking out
8 the remainder of the paragraph and substituting therefor
9 the following: "required by the Act and these Rules,
10 including the engineering analyses and designs; the
11 development of cross-section maps and plans; the geologic
12 drilling and statement of results of test borings and core
13 samplings; preblast surveys; the collection of
14 site-specific resource information and production of
15 protection and enhancement plans for fish and wildlife
16 habitats and other environmental values; and the collection
17 of archaeological and historical information; and any other
18 archaeological and historical information required by the
19 federal department of the interior and the preparation of
20 plans that may be necessitated thereby; and the director
21 shall provide or assume the cost of training coal operators
22 that meet the qualifications concerning the preparation of
23 permit applications and compliance with the regulatory
24 program, and shall ensure that qualified coal operators are

1 aware of the assistance available under this section.

2 On Page 240, subsection 17.1, after the first
3 paragraph by inserting a new paragraph, to read as follows:
4 "The Director will develop a procedure for the interstate
5 coordination and exchange of information collected under
6 the Small Operators Assistance Program."

7 On Page 241, by striking out subsection 17.4 in its
8 entirety and substituting therefor the following: "17.4
9 Request for Assistance. Each applicant requesting
10 assistance shall provide information on forms provided by
11 the director in an application that shall be clear and
12 concise and shall be provided in a format prescribed by the
13 Director and/or a format required by the Federal Office of
14 Surface Mining Reclamation and Enforcement."

15 On Page 249, subsection 17.7 (a) (4), after the words
16 "twelve (12) month period" by striking the remainder of the
17 sentence and inserting in lieu thereof the words
18 "immediately following permit issuance."

19 On page 273, subsection 20.6 (a), after the word
20 "first" by striking out the words "thirty (30)" and
21 inserting in lieu thereof the word "fifteen".

22 On page 273, subsection 20.6 (c), after the words
23 "date of the" by striking out the words "Assessment Officer
24 receiving the

1 finding specified in paragraph (a) of this subsection." and
2 inserting in lieu thereof the words "issuance of a notice
3 or order";

4 On page 274, subsection 20.6 (d), by striking out the
5 first sentence, and inserting in lieu thereof the
6 following: "The time and place of an informal assessment
7 conference shall be posted at the Department of
8 Environmental Protection Office nearest to the operation.

9
10 NOTE: The purpose of this bill is to authorize the
11 Division of Environmental Protection to promulgate
12 legislative rules relating to the prevention and control of
13 air pollution from hazardous waste treatment, storage or
14 disposal facilities.

15
16 Strike-throughs indicate language that would be
17 stricken from the present law, and underscoring indicates
18 new language that would be added.



FILED

OCT 28 10 18 AM '96

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TO: G. Dale Farley

AGENCY: DEP-Air Quality

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 11, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 25 TITLE: 45 DEP-Air Quality

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Danna S. Maurer

TITLE OF PERSON SIGNING: Administrative Secretary

DATE: October 25, 1996

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.