# WEST VIRGINIA
# SECRETARY OF STATE
**KEN HECHLER**
# ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark In This Box

FILED

APR 17 10 20 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: State Tax Division TITLE NUMBER: 110

AMENDMENT TO AN EXISTING RULE: YES X , NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: Pollution Control 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) S.B. 171

SECTION 64-7-2(d), PASSED ON March 7, 1996

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

James H. Paige III

Authorized Signature

James H. Paige III
Secretary Tax & Revenue

3-40

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
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# STATE OF WEST VIRGINIA

## SECRETARY OF STATE

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

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

March 12, 1996

John Montgomery
Tax
Legal Division
Bldg 1 Rm W-401
Charleston, WV 25305

**SB 171** authorizing, **Title 110**, **Series 06**, **Pollution Control Facilities** passed the Legislature on **March 7, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **SB 171** 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 **SB 171 Section 64-7-2(d)**. 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

## PROMULGATION HISTORY

| | |
|---|---|
| RULE TITLE: | Pollution Control Facilities |
| TITLE NUMBER: | 110 |
| SERIES: | 6 |
| NOTICE FILED: | June 21, 1995 |
| HEARING DATE OR PUBLIC COMMENT PERIOD: | June 21, 1995 - July 24, 1995 |
| EMERGENCY RULE: | N/A |
| E.R.D. NUMBER: | |
| E.R.D.DATE: | |
| FILED AS AGENCY APPROVED: | July 28, 1995 |
| FILED AS MODIFIED: | September 22, 1995 |
| LEGISLATIVE AUTHORIZATION: | S.B. 171 |
| EFFECTIVE DATE: | May 1, 1996 |

# State of West Virginia
# Department of Tax and Revenue
**TAX DIVISION**
P. O. Box 2389
Charleston, WV 25328-2389

**GASTON CAPERTON**
GOVERNOR

**JAMES H. PAIGE III**
SECRETARY

## CONSENT TO FILE RULE

April 17, 1996

To Whom It May Concern:

Title of Rule: Pollution Control Facilities

Title Number: 110

Series Number: 6

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Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 17th day of April, 1996.

James H. Paige, III
Secretary, Tax and Revenue

FILED

SEP 22 1 36 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MODIFIED
WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 6

# POLLUTION CONTROL FACILITIES

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## § 110-6-1. General.

1.1 **Scope.** - ~~These regulations~~ This rule establishes general operating procedures for the tax treatment of pollution control facilities.

1.2 **Authority.** - W. Va. Code § 11-6A-4.

1.3 **Filing Date.** -

1.4 **Effective Date.** -

## § 110-6-2. Definitions.

2.1 "Commissioner" means the State Tax Commissioner, or his or her delegate.

2.2 "Coal waste" means coal waste extracted from a gob pile located in West Virginia.

2.3 "Coal waste disposal power project" means an electrical generation facility designed, constructed or installed to reclaim, burn and dispose of coal wastes in compliance with applicable air and water quality standards and which meets the criteria for financing under W. Va. Code § 13-2C-21.

~~2.2~~ 2.4 "Facility" or "Pollution Control Facility" means any personal property designed, constructed, or installed primarily for the purpose of abating or reducing water or air pollution or contamination by removing, altering, disposing, treating, storing, or dispersing the concentration of pollutants, contaminants, wastes or heat in compliance with air or water quality or effluent standards prescribed by or promulgated under the laws of this state or the United States, the design, construction, and installation of which personal property was approved as a pollution control facility by the Office of Water Resources ~~Division~~ of the Department of ~~Natural Resources~~ Environmental Protection or the ~~Air Pollution Control Commission~~ Office of Air Quality, as the case may be. The definition of facilities eligible for salvage tax treatment shall be strictly construed so as to include only such equipment and devices as are installed primarily and immediately to abate air or water pollution. These items of personal property which may coincidentally comply with air or water quality or effluent standards prescribed by or promulgated under the laws of this state or the United States, but which are primarily installed for plant operations or are productive, ~~or add to the economic value of a business enterprise or have a market value after installation in excess of salvage value,~~ will not be ~~deemed~~ considered eligible for salvage tax treatment.

For purposes of W. Va. Code § 11-6A-3, with the exception of intangible personal property, furniture, fixtures, inventories, materials and supplies used in the operation of the facility, all items of personal property installed at a coal waste disposal power project are considered a pollution control facility.

~~2.3~~ 2.5 "Personal Property" means things of value, moveable and tangible, which are the subjects of ownership. This definition is found as a part of West Virginia Code § ~~11-15-3~~ 11-5-3 and applied to all of Chapter 11.

~~2.4~~ 2.6 "Moveable", as used in Section ~~2.3~~ 2.5 of this rule, relates to a device or piece of equipment capable of being moved from one location to another.

~~2.5~~ 2.7 "Salvage Value" means the price for which ~~such~~ the facility would sell in place if voluntarily offered for sale by the owner of the facility ~~thereof~~; that is to say, the scrap value of the material of an eligible facility less the cost of removal of ~~said~~ the facility. Administratively, salvage value will be five percent of the original cost.

**§ 110-6-3. Statement of Pollution Control Facilities Tax Treatment.**

3.1 Pollution control facilities are required for the protection and benefit of the environment and the general welfare of the public. However, pollution control facilities are considered to be nonproductive, to not add to the economic value of a business enterprise, and to have no market value after installation in excess of salvage value.

**~~§ 110-6-3.~~ § 110-6-4. Approval as Pollution Control Facility.**

~~3.1~~ 4.1 Any owner or taxpayer requesting salvage valuation for a pollution control facility under the authority of W. Va. Code § 11-6A-3 must receive approval from the appropriate state agency governing the control of air or water pollution. The approval must state that the pollution control facility subject to salvage value consideration is designed, constructed or installed primarily for the purpose of abating air or water pollution, and does abate or reduce water or air pollution in compliance with air or water quality standards prescribed under the laws of this State or the United States.

**~~§ 110-6-4.~~ § 110-6-5. Allocation or Separation of Values.**

5.1 The value of a pollution control facility first placed in operation subsequent to July 1, 1973 is, for the purpose of ad valorem taxation, considered to be its salvage value.

5.2 When allocating value to a coal waste disposal power project, the salvage value shall be accorded to a portion of the total personal property at the project. That portion shall be equal to the ratio of tons of West Virginia coal waste burned and disposed of at the project to the total tons of coal and coal waste burned and disposed of at the project during the immediately preceding calendar year.

5.2.1 For a project placed in service prior to March 11, 1995 at which the ratio for the calendar year ending December 31, 1994 was less than 70%, the salvage value shall be accorded to 63% of the total personal property at the project for tax years beginning after March 11, 1995, regardless of the actual ratio for any calendar year. The remaining portion of the personal property at the project, but in no event less than 25% of the total personal property at the project, must be accorded full value, that is value without reference to salvage value.

5.3 A facility will not qualify as a pollution control facility under W. Va. Code § 11-6A-5(b) if it burns coal, coal waste or fuel waste obtained from outside West Virginia after March 11, 1995.

~~4.1~~ 5.4 Where the pollution control facility produces a profitable by-product or where a part of such facility is required for the operation of the business without regard to the requirements of state or federal air or water qualify standards, the tax commissioner shall allocate or separate that portion of value attributable to the pollution control activity. Two (2) methods have been developed whereby the Tax Commissioner may accomplish that activity:

5.4.1 **Component Method.**

5.4.1.1 The component method will receive primary consideration as a method of allocation or separation of values of a pollution control facility. The component method of allocation or separation of values requires the identification of the specific item or component of machinery and/or equipment which is used for the purpose of pollution abatement control but which is also an integral part of the production process and the identification of the acquisition cost of the specific item or component. The component thus identified will be appraised at five percent (5%) of the acquisition cost. (For example, a conveyor belt system is used to transport fuel to a boiler to produce energy. The conveyor belt line, while not a pollution abatement control device, contains water sprays and is totally enclosed to retard dust during the transportation process. While the belt line is not a pollution abatement control device but an integral part of the production process, the dust conveyors and the water sprays are eligible pollution abatement facilities. The acquisition costs of these items eligible for salvage value treatment are readily discernible and will receive salvage value treatment.)

5.4.1.2 If an item or the cost associated with an item is not discernible, the alternative substitution method would be used.

5.4.2 **Substitution Method.**

5.4.2.1 When acquisition costs for eligible pollution abatement control items or components are not discernible or the items' or components' use or purpose are such an integral part of the production process that the specific use or task is not clearly ascertainable, the substitution method will be applied.

5.4.2.2 The substitution method of allocation or separation of valuation is based on the assumption that the value attributable to pollution control is the difference between the value of a similar facility which has the same utility without the pollution abatement attributes and the value of the subject property being appraised which has pollution abatement attributes. (For example, a double-walled pipe used for the transportation of a product from the manufacturing area of the plant to the loading area. A single-walled pipe or other means of transportation is required for the operation of the business whereas the cost of the double-walled pipe is twenty-five percent (25%) higher than single wall.) The additional cost of the twenty-five percent (25%) would represent the value attributable to pollution abatement control for the purposes of ad valorem taxation.

**~~§ 110-6-5.~~ § 110-6-6. Recommendation of Values to County Assessor.**

~~5.1~~ 6.1 Each county assessor will be notified by the Tax Commissioner before December ~~first~~ fifteenth of any eligible facility in his or her county on the preceding July first assessment day together with the salvage value of each such facility. ~~Said~~ The notice will recommend that the assessor use the salvage value provided as the appraised value of ~~such~~ the facility.

**~~§ 110-6-4.~~ § 110-6-7. Annual List of Eligible Facility Items.**

~~6.1~~ 7.1 The tax commissioner, annually before July tenth, will prepare a list of apparatus, equipment and components which ~~are~~ as of that date are considered to be eligible for salvage treatment under provisions of ~~Article 6A, Chapter 11 of the Code~~ W. Va. Code § 11-6A-1 et seq. and ~~these regulations~~ this rule. ~~Such~~ The list shall be revised annually to include items made eligible by administrative or judicial decision subsequent to the most recent July tenth list date. This list shall be considered to be a listing of items contemplated for pollution control facility treatment as authorized in Section 4.1 of this rule.

**~~§ 110-6-7.~~ § 110-6-8. Administrative Remedy.**

~~7.1~~ 8.1 ~~Any taxpayer or government official claiming~~ The owner of property assessed under W. Va. Code § 11-3-1 et seq., properly the subject of a determination of the applicability of Pollution Control Facilities Tax Treatment authorized under W. Va. Code § 11-6A-1 et seq., or the Assessor of the county in which the property is assessed, who claims to be aggrieved or damaged by the tax commissioner by the inclusion or exclusion of a facility or any component thereof, or an allocation of any portion thereof, ~~may~~ shall appeal ~~such~~ the action to the commissioner under the authority of W. Va. Code § 11-3-24a. Disputes concerning whether an item of personal property qualifies as a "facility" or "pollution control facility" as defined in Section ~~2.2~~ 2.4 ~~above~~ of this rule shall be ~~deemed~~ considered to be matters of classification or taxability and as such are appealable under the provisions of W. Va. Code § 11-3-24a.

**SENATE BILL NO. 234**

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

[Introduced January 29,1996; referred to the Committee on Natural Resources; Finance; the Judiciary

1106

A BILL to amend and reenact section three, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the tax division to promulgate legislative rules relating to pollution control facilities.

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

That section three, article seven, 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 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.**

**§64-7-3. Department of tax and revenue; ~~division of~~ tax division; and state tax commissioner.**

(a) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, authorized under the authority of section five, article ten, chapter eleven, of this code, modified by the ~~division of~~ tax division to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixth day of January, one thousand nine hundred ninety-five, relating to the ~~division of~~ tax division (business investment and jobs expansion tax credit, corporation headquarters relocation tax credit, small business tax credit, 110 CSR 13C), are authorized.

(b) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, authorized under the authority of section five-s, article ten, chapter eleven, of this code, modified by the ~~division of~~ tax division to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixth day of January, one thousand nine hundred ninety-five, relating to the ~~division of~~ tax division (exchange of information agreement between tax division and division of environmental protection, 110 CSR 6B), are authorized.

(c) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred

<u>ninety-five, authorized under the authority of section four, article six-a, chapter eleven, of this code, modified by the tax division to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of September, one thousand nine hundred ninety-five, relating to the tax division (pollution control facilities, 110 CSR 6), are authorized.</u>

NOTE: The purpose of this bill is to authorize the Tax Division to promulgate legislative rules relating to pollution control facilities.

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

4304

H. B. 4304

(By Delegates Douglas, Gallagher, Faircloth, Compton, Linch and Riggs)

(Introduced January 29, 1996; referred to the Committee on Finance then the Judiciary.)

110-6

A BILL to amend and reenact section three, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the tax division to promulgate legislative rules relating to pollution control facilities.

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

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**§64-7-3. Department of tax and revenue; ~~division of~~ tax division; and state tax commissioner.**



430-

(a) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, authorized under the authority of section five, article ten, chapter eleven, of this code, modified by the ~~division of~~ tax division to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixth day of January, one thousand nine hundred ninety-five, relating to the ~~division of~~ tax division (business investment and jobs expansion tax credit, corporation headquarters relocation tax credit, small business tax credit, 110 CSR 13C), are authorized.

(b) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-four, authorized under the authority of section five-s, article ten, chapter eleven, of this code, modified by the ~~division of~~ tax division to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixth day of January, one thousand nine hundred ninety-five, relating to the ~~division of~~ tax division (exchange of information agreement between tax division and division of environmental protection, 110 CSR 6B), are authorized.

(c) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-five, authorized under the authority of section four, article six-a, chapter eleven, of this code, modified by the tax division to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of September, one thousand nine hundred ninety-five, relating to the tax division (pollution control facilities, 110 CSR 6), are authorized.

NOTE: The purpose of this bill is to authorize the Tax Division to promulgate legislative rules relating to pollution control facilities.

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

KEN HECHLER
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WILLIAM H. HARRINGTON
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(Plus all the volunteer
help we can get)

'96 JUN 12 PM 11 16

**STATE OF WEST VIRGINIA**
**SECRETARY OF STATE**
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

TO: JOHN MONTGOMERY

AGENCY: TAX

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 10, 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: 6 TITLE: 110 TAX

* 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: John M Montgomery

TITLE OF PERSON SIGNING: Attorney

DATE: August 15, 1996

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