

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Subject: Rules Governing Hearings, Appeals and Procedures Before the West Virginia
Air Pollution Control Commission.

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ABSTRACT

This Procedural Regulation was last amended by the Commission on the 20th day of November, 1979, and was filed with the Secretary of State on December 7, 1979. Such amendment added miscellaneous rules, Nos. 4.03 and 4.04. This regulation was amended on the 24th day of May, 1979, and was filed with the Secretary of State on the 28th day of May, 1979. Such amendment added miscellaneous rule No. 4.02. This regulation was amended by the Commission on the 19th day of December, 1977, and was filed with the Secretary of State on December 30, 1977. This amendment added miscellaneous rule 4.01 and rule 2.13. This regulation was originally promulgated by the Commission on the 26th day of October, 1972.

*Title 45
procedures/rules*

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~
Air Pollution Control Commission

~~Chapter 16-20~~
~~Series Procedural~~ *Series 26*
~~(1979)~~

Subject: Rules Governing Hearings, Appeals and Procedures Before the West Virginia
Air Pollution Control Commission.

Section 1. General

1.01. Scope.

Any person, firm, corporation, partnership, or association upon whom a copy of a Director's Cease and Desist Order has been served or who appears at a hearing shall be subject to the following rules. In addition, the Commission hereby establishes certain rules for its proper and orderly function. All procedural rules shall be in harmony with West Virginia laws as found in the Official Code of West Virginia of 1931, as amended, and in case of conflict, the statute law of West Virginia shall prevail.

1.02. Authority. *W. Va. Code § 16-20-5*

This regulation is issued under the authority of the West Virginia Code, Chapter 16, Article 20, Section 5. This regulation relates to West Virginia Code, Chapter 16, Article 20, Sections 1 through 13 inclusive.

1.03. Filing Date.

This regulation was originally promulgated on the 26th day of October, 1972, and was last amended on the 20th day of November, 1979,

and was last filed with the office of the Secretary of State the 7th day of December, 1979. Further, this regulation was filed pursuant to West Virginia Code, Chapter 29A, Article 2, Section 5 on the 30th day of December, 1982 in the office of the Secretary of State.

1.04. Effective Date.

The original effective date of this regulation is the 26th day of October, 1972. The effective date as a result of the last amendment is January 6, 1980.

1.05. Type.

This regulation is a procedural rule as defined in West Virginia Code, Chapter 29A, Article 2.

Section 2. Administrative Hearings.

2.01. Notice of Hearing.

Any person, firm, corporation, partnership, or association who shall be a party in any hearing held by the Commission shall be given at least ten (10) days' written notice of such hearing and shall be served by registered or certified mail or by any proper law-enforcement officer.

2.02. Quorum.

Any hearing before the Commission shall be conducted by a quorum of that body.

2.03. Testimony at Hearing.

Testimony in any hearing before the Commission shall be given under oath, which oath shall be administered by the Chairman of the Commission.

2.04. Place of Hearing.

Hearings will be held in Charleston, West Virginia, unless the Commission determines otherwise.

2.05. Subpoenas.

In any hearing called by the Commission, the Commission has the power and authority to issue subpoenas. Any person receiving a subpoena issued hereunder shall honor the same as though it was issued by a circuit court of the State, and shall appear as a witness in response to such subpoena. In case of disobedience or neglect of any subpoena served on any person or the refusal of any person to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held or the judge thereof in vacation, upon application by the Commission, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such circuit court or a refusal to testify therein.

2.06. Chairman's Designate.

At any hearing the Chairman of the Commission shall preside and have all authority necessary to the proper conduct of such hearing. In the event the Chairman cannot be present for such hearing, he shall designate a member of the Commission to preside over the hearing and such designate shall have all power to act on behalf of the Chairman and make any decisions necessary and proper while presiding over such hearing.

When the term "Chairman" is used in these rules relating to the conduct of the hearing, it shall also mean designate of the Chairman.

2.07. Representation by Attorney at Law.

At any hearing held by the Commission, the firm, corporation, partnership, or association which is the subject of such hearing may be represented by an attorney at law duly admitted to practice before any circuit court of this State. Any person brought before the Commission by Order may represent himself or be represented by such attorney at law.

2.08. Questioning of Witnesses.

Any witness at a hearing may be questioned by any member of the Commission.

2.09. Evidence.

Written stipulation of facts may be submitted. Affidavits will not be considered as proof of any facts. The Chairman may admit any relevant evidence.

2.10. Briefs.

At the conclusion of any hearing, briefs may be filed with the Commission. Such briefs shall be filed within such time as specified by the Chairman.

2.11. Continuance.

A continuance of any hearing may be granted by the Commission for good cause shown. Any party desiring a continuance shall file such

written motion with the Secretary of the Commission at least three (3) working days prior to the scheduled hearing to allow for notification of witnesses and for polling the Commission. The Secretary shall promptly poll the Commission on such requested action and shall promptly notify all parties of such hearing of the Commission's action on the motion.

2.12. Compliance Order.

The Commission shall make and enter any necessary compliance order following an administrative hearing. Such final order shall be based on findings of fact and conclusions of law.

2.13. Exhibits.

Any person, firm, corporation, partnership or association who desires to submit exhibits or other writings as evidence into the record of a public hearing held pertaining to the promulgation or amendment of a rule or regulation of the Commission shall submit the exhibits or other documentary evidence and eleven (11) copies thereof.

No copies shall be required of exhibits or other writings composed of three (3) or less standard-size pages.

Section 3. Appeals of Cease and Desist Orders.

3.01. Cease and Desist Order.

If, from any investigation made by him or from any complaint filed with him, the Director shall be of the opinion that a person is violating the provisions of Article 20, Chapter 16, (§ 16-20), of the Code of West

Virginia of 1931, as amended, or any rules and regulations promulgated pursuant to thereto, he shall make and enter an order directing such person to cease and desist such activity. The Director shall fix a reasonable time in such order by which such activity must stop or be prevented. The order shall contain the findings of fact upon which the Director determined to make and enter such order.

3.02. Service.

The Director shall cause a copy of any such order to be served upon such person by registered or certified mail or by any proper law-enforcement officer.

3.03 General Appeal Procedure.

Any person upon whom a copy of such final Cease and Desist Order has been served may appeal such order to the Air Pollution Control Commission and shall be subject to the following rules of procedure for appeal of Cease and Desist Orders.

Any hearing held by the Commission on an appeal of the Director's Cease and Desist Order shall be held in accordance with Section 6, Article 20, Chapter 16 (§ 16-20-6), of the Code of West Virginia of 1931, as amended.

3.04. Subpoenas and Subpoenas Duces Tecum.

In any hearing held by the Commission on an appeal of the Director's Cease and Desist Order, any member of the Commission or the Secretary

thereof, shall have the power and authority to issue subpoenas or subpoenas duces tecum in the name of the Commission in accordance with the provisions of Section 1, Article 5, Chapter 29A (§ 29A-5-1), of the Code of West Virginia of 1931, as amended. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in Section 1, Article 5, Chapter 29A (§ 29A-5-1), of said Code, and all of the said Section 1 provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoena and subpoena duces tecum issued for the purpose of an appeal hearing hereunder.

3.05. Parties to the Hearing.

Director's Cease and Desist Order: Any person upon whom a copy of such final order has been served may appeal such order to the Air Pollution Control Commission. The person so appealing shall be known as the appellant and the Director shall be known as the appellee.

3.06. Notice of Appeal.

Such appeal shall be perfected by filing a notice of appeal with the Commission, on the form prescribed by the Commission for such purpose, within fifteen (15) days after the date upon which the appellant received a copy of the order. The notice of appeal shall set forth the order complained of and the grounds upon which the appeal is based. The filing of such notice of appeal shall stay the effect of the order complained of until final determination thereof is made by the Commission. A copy of the notice of appeal shall be filed by the Commission with the Director

within eight (8) days after the notice of appeal is filed with the Commission.

3.07. Certifying the Record.

Within seven (7) days after receipt of his copy of the notice of appeal, the Director shall prepare and certify to the Commission a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the Director's file relating to the matter in question. The Commission shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee.

3.08. Hearing Time.

Any such hearing shall be held within twenty (20) days after the date upon which the Commission received the timely notice of appeal, unless there is a postponement or continuance.

3.09. Order of Commission.

After such hearing and consideration of all of the testimony, evidence and record in the case, the Commission shall make and enter an order affirming, modifying, or vacating the order of the Director, or shall make and enter such order as the Director should have entered.

3.10. Findings and Conclusions.

Such order shall be accompanied by findings of fact and conclusions of law as specified in Section 3, Article 5, Chapter 29A (§ 29A-5-3), of the Code of West Virginia of 1931, as amended, and a copy of such order and accompanying findings and conclusions shall be served upon the appellee in person or by registered or certified mail. The order of the Commission shall be final unless vacated or modified upon judicial review thereof in

accordance with the provisions of Section 7, Article 20, Chapter 16 (§ 16-20-7), of the Code of West Virginia of 1931, as amended.

3.11. Additional Rules.

The Commission may from time to time revise and promulgate additional rules or modify these rules of procedure.

3.12. Severability.

The sections and subsections of these rules of procedure shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional, or in any manner contrary to the laws of the State of West Virginia, then such opinion or enactment shall invalidate only that particular section or subsection of these rules and all other sections shall remain in full force and effect, provided such remaining portions are not determined to be inseparable, and to this end these rules are declared separable.

Section 4. Miscellaneous Rules.

4.01. Freedom of Information.

Any person, firm, corporation, partnership or association has the right to inspect and request a copy of those public records prepared, owned, and retained by this agency pursuant to Chapter 29B, Article 1 of the Code of West Virginia of 1931, as amended. In accordance with said Code, the Commission hereby adopts the following fee schedule:

	<u>Documents</u>	<u>Fee</u>
(1)	Papers, maps, cards or other documentary materials in sheet form no larger than 8½ x 14	\$0.50 per copy page

	<u>Documents</u>	<u>Fee</u>
(2)	Books	\$0.50 per page if copies or actual cost of book plus 25% procurement and handling fee
(3)	Photographs	Actual cost of copy plus 25% handling fee
(4)	Tapes and other magnetic recordings	\$50.00 per 600 feet reel, both sides; \$50.00 per 60 minute cassette, both sides
(5)	All other writings	\$0.50 per copy page or actual cost of copy if cost exceeds \$0.50 per copy page, plus 25% handling fee

If copies of the requested information must be shipped prepaid, actual cost of shipping shall also be assessed.

If, in the opinion of the Director, the requested writings are subject to valid copyright restrictions, the Director may not provide the requested copies.

Where, in the opinion of the Director, the estimated fee exceeds the amount of five dollars (\$5.00), the Director may require payment in advance.

4.02. Public Notice.

Public notice including the time, place and purpose of all regularly scheduled meetings, special meetings, and administrative hearings shall be given in accordance with the following:

(1) For rule-making hearings, at which an opportunity shall be afforded all interested persons to submit data, objections, suggested amendments, views, and arguments orally or in writing, notice shall be:

(a) Filed in the state register not less than thirty (30) nor more than sixty (60) days prior to the date of hearing;

(b) Published as a Class II legal advertisement in compliance with the provisions of Chapter 59, Article 3, of the Code of West Virginia, as amended, and the publication area shall be in each of the state's air quality control regions which will be affected.

In addition, a copy of the proposed rule or regulation or amendments to existing rules or regulations shall be available for public inspection in at least one location in each region to which it will apply.

(2) For meetings for final rule-making consideration, at which meetings the Commission will finally adopt the rule or regulation or amendment as proposed, amend and finally adopt the proposed rule or regulation or amendment, as amended, or withdraw the

proposed rule, regulation or amendment, notice shall be filed in the state register not less than ten (10) nor more than thirty (30) days prior to the date of the meeting.

(3) For administrative hearings and contested cases, in addition to notice as provided in Section I, Rule No. 1, and Section II, Rule No. 8, the complainant or appellant shall be given written notice not less than ten (10) nor more than thirty (30) days prior to the date of the hearing and notice shall be filed in the state register not less than ten (10) nor more than thirty (30) days prior to the date of the hearing.

(4) For hearings for consideration of proposed Consent Orders which will be submitted to the United States Environmental Protection Agency for consideration as Delayed Compliance Orders, notice shall be given in accordance with provision (1) herein for rule-making hearings.

(5) For all other regularly scheduled meetings and special meetings, notice shall be filed in the state register not less than seven (7) nor more than sixty (60) days prior to the date of the hearing.

(6) For emergency meetings, notice shall be placed on the door of the Agency's main office and shall be transmitted to the news media.

4.03. Consent Orders.

Any alternative program, plan, or design proposed by a source as provided for in ^{Sewer 17, 19, 21, 23 and 24} ~~Regulation XVII, XIX, XXI, XXIII, and XXIV~~ and approved by the Commission shall be embodied in a Consent Order pursuant to Chapter 16, Article 20, Section 5 (17) of the Code of West Virginia of

1931, as amended, and notice of entry of any such Consent Order shall be provided to the United States Environmental Protection Agency, Region III, not more than 30 days after entry for their review for inclusion in the State Implementation Plan.

4.04. Test Procedures.

Whenever the Commission adopts or amends a test procedure, the Commission shall comply with the provisions of Chapter 29A, Article 3 of the Code for promulgation of a rule of the type described in Section 7 (a) of said Code and, in addition, notice of the said adoption or amendment shall be provided to the United States Environmental Protection Agency, Region III, not more than 30 days after final action of the Commission for their review for inclusion in the State Implementation Plan.



WEST VIRGINIA
AIR POLLUTION CONTROL COMMISSION
1558 Washington Street, East
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TELEPHONE: 348-2275 OR 348-3286

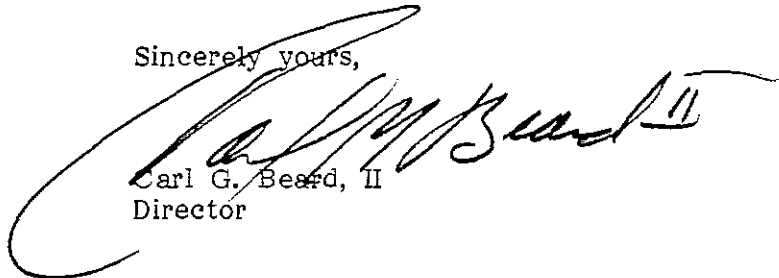
December 30, 1982

Ms. Mary Lopez
Office of the Secretary
of State
Capitol Complex
Charleston, West Virginia 25305

Dear Ms. Lopez:

As you are aware, some of the attached rules have been photocopied. Because of lack of staff and time, we have been unable to retype all the rules. We are presently starting to retype all the rules and will file those with the Secretary of State's office from time to time, as quickly as we can.

Sincerely yours,


Carl G. Beard, II
Director

CGB,II:cc

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 12-30-82
Administrative Law Division