

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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Nov 12 2 41 PM '92

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #7

Effective Date

Dec. 1, 1992 *je*

NOTICE OF AN EMERGENCY RULE

WV Air Pollution Control Commission  
AGENCY: Office of Air Quality, DEP TITLE NUMBER: 45CSR29

CITE AUTHORITY: W. Va. Code §16-20-5

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

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

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

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 45CSR29

TITLE OF RULE BEING FILED AS AN EMERGENCY: "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions."

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Attached.

5.00

Use Additional Sheets If Necessary.

*G. Dale Farley*  
Signature  
G. Dale Farley, Chief OAO

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compounds Emissions and Oxides of Nitrogen"

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency: Office of Air Quality, Department of Environmental Protection

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next 1993-94	1994-95
Estimated Total Cost	\$ 42,000	\$ ----	\$ 7,300	\$ 85,000	\$ 42,000
Personal Services	40,000	----	7,300	80,000	40,000
Current Expense	2,000	----		5,000	2,000
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

FY'92 includes \$7,300 in administration staff time to review EPA guidance and develop regulation. FY'93 includes identification of affected facilities, develop reporting forms and printing, mailings, and processing data. Thereafter, annual includes tracking submitted statements, processing data and follow-ups.

3. Objectives of these rules:

Pursuant to the 1990 Clean Air Act Amendments (CAAA), West Virginia is required to develop a regulation requiring the annual submittal of emission statements from sources emitting VOC/NO<sub>x</sub> in ozone non-attainment areas. The CAAA further requires states to track VOC/NO<sub>x</sub> emissions to determine the progress in achieving the mandatory reductions required under the Act. This regulation requires the annual submission of emission statements and the data format and reporting requirements.

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

Estimated increase of one (1) full-time staff person after start-up of program.

B. Economic impact on political subdivisions; specific industries; specific groups of citizens.

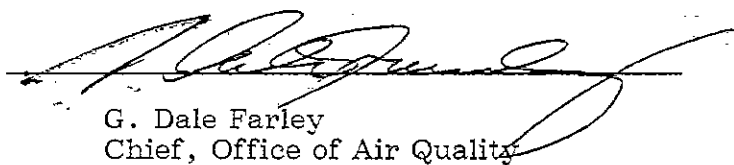
This regulation affects stationary points sources in the ozone non-attainment counties of Cabell, Wayne, Kanawha, Putnam, Wood and Greenbrier. Stationary sources in these counties must determine their actual emissions of VOC/NO<sub>x</sub> and submit this data to the Office of Air Quality. Economic impacts would include gathering, summarizing and formatting the data for submission to the Office of Air Quality.

C. Economic impact on citizens/public at large.

None.

Date: November 12, 1992

Signature of agency head or authorized representative:



G. Dale Farley  
Chief, Office of Air Quality

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DATE: November 12, 1993  
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
FROM: G. Dale Farley  
Office of Air Quality

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

EMERGENCY RULE TITLE: 45CSR29 - "Regulations Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions."

1. Date of filing: November 12, 1992
  
2. Statutory authority for promulgating the emergency rule: \_\_\_\_\_  
W. Va. Code §16-20-5
  
3. Date of filing of proposed legislative rule: September 18, 1992
  
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
Emergency Rule 45CSR29 is a new rule and does not amend or repeal any current rule.
  
5. Has the same or similar emergency rule previously been filed and expired?  
No
  
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
See Number 7. West Virginia has six (6) counties (Kanawha, Putnam, Cabell, Wayne, Wood and Greenbrier) designated as ozone nonattainment areas. This rule will assist these counties in achieving air quality attainment status for ozone. See Statement of Emergency.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

42 U.S.C. §7511a (a)(3)(B) [C.A.A. §182 (a)(3)(B)].

Time Limit: November 15, 1992

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The federal government requires states with ozone nonattainment areas to adopt rules requiring stationary sources emitting volatile organic compounds (VOCs) or oxides of nitrogen (No<sub>x</sub>) to submit an annual emission statement. Failure to adopt such a rule will trigger federal sanctions as provided in 45 U.S.C. §7509 [C.A.A. §179]. See Statement of Emergency.

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TITLE 45  
EMERGENCY LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION AS PROMULGATED BY  
WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 29  
RULE REQUIRING THE SUBMISSION OF EMISSION  
STATEMENTS FOR VOLATILE ORGANIC COMPOUND  
EMISSIONS AND OXIDES OF NITROGEN EMISSIONS

§45-29-1. General.

1.1. Scope. -- This rule requires the submission of an emission statement from owners and operators of stationary sources emitting volatile organic compounds (VOCs) or oxides of nitrogen ( $\text{NO}_x$ ). Facilities with less than 25 tons per year of plant-wide actual VOC or  $\text{NO}_x$  emissions are exempt from the requirements of this rule if such sources are included in the Chief of Air Quality's base-year and periodic emissions inventories. This rule applies only to stationary sources located in Putnam, Kanawha, Cabell, Wayne, Wood, and Greenbrier Counties.

1.2. Authority. -- W.Va. Code §16-20-5.

1.3. Filing Date. --

1.4. Effective Date. --

§45-29-2. Definitions.

For the purpose of this rule, the following definitions shall apply:

2.1. "Actual emissions" means the quantity of volatile organic compounds (VOC) or oxides of nitrogen ( $\text{NO}_x$ ) emitted from a source during a particular time period.

2.2. "AIRS" means the U.S. EPA's Aerometric Information Retrieval System.

2.3. "AFS" means AIRS Facility Subsystem.

2.4. "Ambient air" means that portion of the atmosphere, external to

buildings, to which the general public has access.

2.5. "Annual fuel or process throughput rate" means the actual or estimated annual fuel usage or process operating rate.

2.6. "Certifying individual" means the individual responsible for the completion and certification of the emission statement (e.g. officer of the company) and who will take legal responsibility for the emission statement's accuracy.

2.7. "Chief of Air Quality" or "Chief" means the chief of the Office of Air Quality or his or her designated representative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of §22-1-1, et seq., of the West Virginia Code.

2.8. "Commission" means the West Virginia Air Pollution Control Commission.

2.9. "Control efficiency" means the actual control efficiency achieved by the control device. The actual efficiency shall reflect control equipment downtime and maintenance degradation.

2.10. "Control equipment identification code" means the AIRS/AFS code which defines the equipment (such as an incinerator or carbon adsorber) used to reduce, by destruction or removal, the amount of air pollutant(s) in an air stream prior to discharge to the ambient air.

2.11. "Director" means the director of the Division of Environmental Protection or his or her designated representative.

2.12. "Division of Environmental Protection" or "DEP" means that division of the Department of Commerce, Labor and Environmental Resources which is created by the provisions of the West Virginia Code §22-1-1, et seq.

2.13. "Emission estimation method code" means a one-position code which identifies the estimation technique used in the calculation of estimated emissions.

2.14. "Emissions Unit" means any part of a stationary source which emits or has the potential to emit any pollutant regulated pursuant to the provisions of this

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2.15. "Estimated emissions units" means a two-position code which identifies the units associated with an estimated emissions.

2.16. "Facility" means all of the pollutant-emitting activities that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or person under common control).

2.17. "Measured emissions method code" means a one-position code which identifies the test method used to ascertain measured emissions.

2.18. "Measured emissions units" means a two-position code which identifies the units associated with a measured emissions value.

2.19. "Owner or operator" means any person who owns, leases, controls, operates, or supervises a facility, a source, or air pollution control or monitoring equipment.

2.20. "Oxides of nitrogen" (also denoted as  $\text{NO}_x$ ) means, in air pollution usage, a compound comprised of nitric oxide (NO) and nitrogen dioxide ( $\text{NO}_2$ ), expressed as molecular weight of  $\text{NO}_2$ .

2.21. "Ozone season" means that period of the year during which conditions for photochemical ozone formation are most favorable. Generally, sustained periods of direct sunlight (i.e., long days, small cloud cover) and warm temperatures. For West Virginia, the ozone season is June, July, and August.

2.22. "Percent seasonal throughput" means the weighted percent of yearly activity for the following periods:

- a. December-February;
- b. March-May;
- c. June-August; and
- d. September-November.

2.23. "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the



laws of this or any other state or country, and any firm, partnership, or association of whatever nature.

2.24. "Point" means a physical emission point or process within a facility that results in pollutant emissions.

2.25. "Potential to emit" means the capability of a source to emit a pollutant at a maximum design capacity, except as constrained by the rules of the commission or U.S. EPA enforceable conditions which include the effect of installed air pollution control equipment, restrictions on the hours of operation, and the type and amount of material combusted, stored, or processed.

2.26. "Source" means any building, structure, equipment, or installation that directly or indirectly releases or discharges, or has the potential to release or discharge, VOCs or  $\text{NO}_x$  into the ambient air.

2.27. "Stationary Source" means any stationary facility or source of air pollutants which directly emits, or has the potential to emit, 10 tons per year or more of VOC or 100 tons per year or more of  $\text{NO}_x$ .

2.28. "Typical ozone season day" means a day typical of that period of the year during which conditions for photochemical ozone formation are most favorable, generally, sustained periods of direct sunlight (i.e., long days, small cloud cover) and warm temperatures. For West Virginia, this day is a typical day during the period of June, July, and August until otherwise notified by the chief.

2.29. "Volatile Organic Compounds" (also denoted as VOCs) means any organic compound that participates in atmospheric photochemical reactions. This includes any organic compound other than the following exempt compounds: methane, ethane, methyl chloroform (1,1,1-trichloromethane), CFC-113 (trichlorotrifluoroethane), methylene chloride, CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-22 (chlorodifluoromethane), CFC-23 (trifluoromethane), CFC-114 (dichlorotetrafluoroethane), CFC-115, (chloropentafluoroethane), HCFC-123 (dichlorotrifluoroethane), HFC-134a (tetrafluoroethane), HCFC-141b (dichlorofluoroethane), HCFC-142b (chlorodifluoroethane), 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124), pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-

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trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

- a. Cyclic, branched, or linear, completely fluorinated alkanes;
- b. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- c. Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
- d. Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

Any organic photochemically nonreactive compounds listed in the Federal Register by the U.S. EPA after the effective date of this rule may be exempted by the commission by reference as long as established scientific standards and guidelines are followed by the U.S. EPA. For purposes of determining compliance with emission limits, VOC will be measured by the test methods approved by the U.S. EPA. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emission standard.

### §45-29-3. Applicability.

3.1. The provisions of this rule apply to stationary sources of volatile organic compounds (VOCs) or oxides of nitrogen (NO<sub>x</sub>).

3.2. Exemption. Facilities with less than 25 tons per year of plant-wide actual VOC or NO<sub>x</sub> emissions are exempt from the requirements of this rule if such sources are included in the Chief of Air Quality's base year and periodic emissions inventories.

3.3. Counties affected. This rule applies only to stationary sources of VOCs or NO<sub>x</sub> located in Putnam, Kanawha, Cabell, Wayne, Wood, and Greenbrier counties.

### §45-29-4. Compliance Schedule.

4.1. The owner or operator of a stationary source subject to the

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requirements of this rule shall submit an emission statement to the chief on an annual basis. For the calendar year of 1992, the emission statement shall be submitted by May 31, 1993. For each calendar year thereafter, the emission statement shall be submitted by April 15, of the following year.

4.2. Emission statement reporting forms, guidance, and numerical codes or symbols will be provided by the chief for applicable sources.

4.3. The chief may require the submission of such data in a specified format on magnetic media.

§45-29-5. Emission Statement Requirements.

5.1. The emission statement shall contain, at a minimum, the following information:

a. Certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. The certification shall include the full name, title, signature, date of signature, and telephone number of the certifying individual.

b. Source identification information:  
1. Full name, physical location, and mailing address of the facility.

c. Operating data:  
1. Percentage annual throughput;  
2. Days per week for both the normal operating schedule and for a typical ozone season day (if different from the normal operating schedule);  
3. Hours per day for both the normal operating schedule and for a typical ozone season day (if different from the normal operating schedule); and  
4. Hours per year for both the normal operating schedule and for a typical ozone season day (if different from the normal operating schedule).

d. Emissions information:  
1. Actual VOC and/or NO<sub>x</sub> emissions at the process level, in tons per year and pounds per day for a typical ozone season day (estimated or

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measured);

2. Emission method code (estimated or measured);
3. Units code to identify the emissions units (tons per year or pounds per day); and
4. Calendar year for the emissions.

e. Control equipment information:

1. Current primary and secondary control equipment identification codes; and
2. Current control equipment efficiencies (%).

f. Process rate data:

1. Annual fuel or process throughput rate; and
2. Peak ozone season daily process rate.

5.2. The owner or operator submitting an emission statement pursuant to the provisions of this rule shall maintain records of test methods, procedures, calculations or other information used to determine emission estimates for a period of three (3) years following the date of submittal.

5.3. The chief may require the submittal of records, test methods, or other data upon which the information in section 5.2 is based to verify emission estimates.

5.4. All non-confidential emission statement data will be submitted by the chief to U.S. EPA by updating AIRS/AFS on an annual basis. All confidential emission statement data will be submitted by the chief to U.S. EPA in accordance with the provisions of W. Va. Code §16-20-12 and rules promulgated thereunder.

**§45-29-6. Enforceability.**

For the purpose of federal enforceability of the provisions of this rule, reference to the commission, director, or chief shall also mean the Administrator of the U.S. EPA.

**§45-29-7. Severability.**

The provisions of this rule are severable and if any provision or part thereof

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shall be held invalid, unconstitutional, or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sections, or parts of this rule or their application to any persons and circumstances.

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45CSR29  
REGULATIONS REQUIRING THE SUBMISSION OF  
EMISSION STATEMENTS FOR VOLATILE ORGANIC  
COMPOUND EMISSIONS AND OXIDES OF NITROGEN EMISSIONS

NOV 12 2 41 PM '92  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

STATEMENT OF EMERGENCY

The Clean Air Act Amendments of 1990 (42 U.S.C. §§7401, et seq.) require a November 15, 1992, revision to the State Implementation Plan (SIP) for states with ozone nonattainment areas. West Virginia has six counties designated as ozone nonattainment areas. The counties so designated are Kanawha, Cabell, Putnam, Wayne, Wood and Greenbrier. (Note: Greenbrier county is a marginal ozone nonattainment area. All other listed counties are moderate ozone nonattainment areas).

42 U.S.C. §7511a(a)(3)(B)[C.A.A. 182(a)(3)(B)] requires states with ozone nonattainment areas to adopt rules requiring the annual submission of emission statements from stationary sources emitting volatile organic compounds (VOCs) or oxides of nitrogen (NOx). The emergency rule 45CSR29 provides for emission statements as required by the Clean Air Act. Sanctions for state failure to revise State Implementation Plans are provided in 42 U.S.C. §7509 [C.A.A. §179].



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

OFFICE OF THE SECRETARY

State Capitol, Room R-151  
Charleston, West Virginia 25305-0310  
Telephone: (304) 558-3255  
Fax No.: (304) 558-4983

92001 27 1111:46  
GASTON CAPERTON  
Governor

JOHN M. RANSON  
Cabinet Secretary

October 26, 1992

Mr. L. Newton Thomas, Jr.  
Chairman, WVAPCC  
914 Newton Road  
Charleston, WV 25314

**RE: Proposed Rules - Title 45, Series 19 (Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants/Non-attainment NSR); Title 45, Series 21 (Regulations to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds/VOC RACT), and Title 45, Series 29, (Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions/VOC and NO<sub>x</sub> Emissions Statements)**

Dear Chairman Thomas:

Dale Farley, Chief of the Office of Air Quality, has advised me that in order for West Virginia to remain in compliance with 1990 Clean Air Act requirements, rules filed by the Commission earlier this year should now be adopted on an emergency basis. As a result, pursuant to West Virginia Code §5F-2-2(a)(12), I hereby consent to the proposal of the rules specified above as emergency rules.

You may attach a copy of this letter to your filing with the Secretary of State as evidence of my consent.

Sincerely yours,

*John M. Ranson*  
John M. Ranson  
Cabinet Secretary

JMR:cjb

cc: Dale Farley  
Ann Spaner

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