

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

Form #5

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SEP 5 4 09 PM '95

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

DIVISION OF ENVIRONMENTAL PROTECTION  
AGENCY: OFFICE OF AIR QUALITY TITLE NUMBER: 45CSR30A

CITE AUTHORITY: WV CODE §§22-5-1 et seq.; WV CODE §29A-1-2-(c); WV 45CSR30

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE \_\_\_\_\_  
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW  
\_\_\_\_\_

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

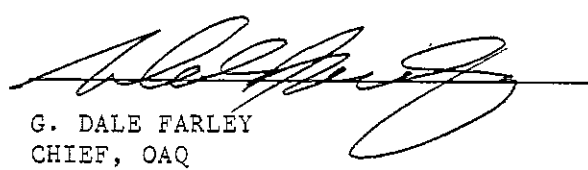
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 45CSR30A

TITLE OF RULE BEING ADOPTED: DEFERRAL OF AREA SOURCES FROM PERMITTING  
REQUIREMENTS

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS OCTOBER 5, 1995

  
G. DALE FARLEY  
CHIEF, OAQ

Appendix B  
Fiscal Note For Proposed Rules  
Page Two

3. Objectives of these rules:

Provide area sources (small sources) with 3-year deferral from permitting and application submittal requirements under WV 45CSR30.

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

The effect of this interpretive rule is to spread the Title V permitting workload over a 5 year period instead of a 3 year period which should reduce the demands upon and long-term operating costs of the DEP permit-writing group.

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

This rule provides small sources at least 3 years of relief from Title V application submittal requirements and will accordingly reduce or eliminate near-term costs to these sources in preparing permit applications.

C. Economic impact on citizens/public at large.

None.

Date: June 14, 1995

Signature of agency head or authorized representative:



---

G. Dale Farley  
Chief, Office of Air Quality

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 45CSR30A- Deferral of Area Sources From Permitting Requirements

Type of Rule: \_\_\_\_\_ Legislative  X  Interpretive \_\_\_\_\_ Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East  
Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There- after
	\$	\$	\$	\$	\$
Estimated Total Cost					
Personal Services		-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other					

2. Explanation of above estimates:

Fees will remain unchanged since deferred sources will still pay Title V fees; however, they will not have to apply for an operating permit under WV 45CSR30 for 3 years. Although Title V program costs are projected to neither decrease nor increase overall as a result of this interpretive rule, deferring minor facilities from early permitting requirements should relieve the pressure for future program fee increases to meet permit issuance mandates.

## 45CSR30A

### DEFERRAL OF AREA SOURCES FROM PERMITTING REQUIREMENTS

#### SUMMARY

The purpose of 45CSR30A, a proposed new interpretive rule, is to provide guidance and information to the public regarding the deferral of certain sources from the obligation to obtain a permit under 45CSR30 "Requirements for Operating Permits." Such a deferral is authorized by WVCSR §45-30-3.2 and is consistent with the United States Environmental Protection Agency's interpretation of the Title V program under the Clean Air Act Amendments of 1990.

The provisions of 45CSR30A will defer certain sources from the obligation to obtain a permit under 45CSR30 for a period of three (3) years from the effective date of the rule, with a possible extension of 2 (two) additional years. The sources which will be deferred consist of area sources (non-major sources) in a source category subject to requirements under §111 or §112 of the Clean Air Act, provided that an affected source or solid waste incineration unit required to obtain a permit pursuant to §129(e) of the Clean Air Act may not be deferred under the rule.

The deferral of sources under this rule will permit the agency to direct its efforts and resources toward the larger sources of air pollutants during the initial stages of the State's implementation of the Title V operating permits program, while ensuring that the smaller sources of air pollutants are monitored and controlled under other currently existing State regulatory programs.

## 45CSR30A

### DEFERRAL OF AREA SOURCES FROM PERMITTING REQUIREMENTS

#### STATEMENT OF CIRCUMSTANCES

The agency is proposing 45CSR30A as a new interpretive rule to provide guidance and information to the public regarding the provisions of 45CSR30 "Requirements for Operating Permits," effective April 27, 1994. Specifically, 45CSR30A is the mechanism the Chief is proposing to use to defer certain sources from the obligation to obtain a permit under the provisions of 45CSR30. This deferral is authorized by the provisions of WVCSR §45-30-3.2.

45CSR30A

FILED

SEP 5 4 10 PM '95

TITLE 45  
INTERPRETIVE RULE  
BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 30A  
DEFERRAL OF AREA SOURCES FROM PERMITTING REQUIREMENTS

**§45-30A-1. General.**

1.1. Scope. -- Series 30A provides for the deferral of area sources from the obligation to obtain a permit under WV 45CSR30 "Requirements for Operating Permits."

1.2. Authority. -- W.Va. Code §22-5-4; W.Va. Code §22-5-12; W.Va. Code §29A-1-2(c); and WV 45CSR30.

1.3. Filing Date. -- September 5, 1995

1.4. Effective Date. -- October 5, 1995

**§45-30A-2. Definitions.** -- The definitions set forth in WVCSR §45-30-2 shall apply to this rule as though set forth herein.

**§45-30A-3. Deferral of Area Sources.**

3.1. Pursuant to the authority granted in WVCSR §45-30-3.2, the Chief of the Office of Air Quality hereby defers from the obligation to obtain a permit under WV 45CSR30 each source that:

3.1.1. Is subject to a standard or other requirement promulgated under §111 or §112 of the Clean Air Act; and

3.1.2. Is not a major source, an affected source, or a solid waste incineration unit required to obtain a permit pursuant to §129(e) of the Clean Air Act.

3.2. Notwithstanding the provisions of subsection 3.1. of this rule, the Chief may not defer a source from the obligation to obtain a permit if the source is included in a source category for which U.S. EPA has promulgated rules since July 21, 1992, which rules do not authorize the deferral of such source from the obligation to obtain a permit under Title V of the Clean Air Act.

3.3. Any sources deferred by the U.S. EPA from the obligation to obtain a Title V permit which are subsequently exempted from the requirement to obtain a permit shall not be required to

shall count fugitives from all "affected facilities" at the source, i.e., from all thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems.

3.4. Fugitive emissions of hazardous air pollutants listed in §112(b) of the Clean Air Act shall be counted in determining whether a source is a major source subject to the requirements of WV 45CSR30, regardless of whether the source is included in a source category listed pursuant to §112(c) of the Clean Air Act.

3.5. For the purpose of this section, the term "affected facilities" means those facilities which are listed or identified as "affected facilities" in the applicable standard promulgated under §111 or §112 of the Clean Air Act.

**§45-30B-4. Sources Not Required To Count Fugitive Emissions In Making Major Source Determinations.**

4.1. Any source which belongs to a stationary source category regulated by a standard promulgated under §111 or §112 of the Clean Air Act after August 7, 1980, including, but not limited to, those source categories listed in subparagraphs AA through QQ of WV CSR §45-30-2.26.b., shall not be required to count fugitive emissions in order to determine whether the source is a major source subject to the requirements of WV 45CSR30; provided however, that any such source shall still be required to count fugitives for hazardous air pollutants as provided under subsection 3.4 of this rule; provided further, that all such sources shall be required to count fugitive emissions at such time as U.S. EPA promulgates rulemaking pursuant to §302(j) of the Clean Air Act applicable to such sources.

STATE OF WEST VIRGINIA  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

The following is a transcript of proceedings had when a public hearing was held on the 19th day of July, 1995, beginning at 6:00 p.m., in the conference room of the Office of Air Quality, 1558 Washington Street, East, Charleston, Kanawha County, West Virginia, with Moderator Jeanne Chandler presiding, before Penny L. Kerns, Notary Public and Certified Court Reporter.

45CSR30A

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I N D E X

<u>Speaker</u>	<u>Page</u>
Introduction by the Moderator.....	3

Reporter's certificate, 5

1 MS. CHANDLER: The next part of the hearing  
2 will be on the proposed interpretive rules. I'd like to  
3 remind you that these rules will not go through the  
4 legislative rulemaking process.

5 45CSR30A, Deferral of area sources from  
6 permitting requirements.

7 The purpose of 45CSR30A, a proposed new  
8 interpretive rule, is to provide guidance and information  
9 to the public regarding the deferral of certain sources  
10 from the obligation to obtain a permit under 45CSR30  
11 "Requirements for Operating Permits." Such a deferral is  
12 authorized by WVCSR §45-30-3.2 and is consistent with the  
13 United States Environmental Protection Agency's  
14 interpretation of the Title V program under the Clean Air  
15 Act Amendments of 1990.

16 The provisions of 45CSR30A will defer  
17 certain sources from the obligation to obtain a permit  
18 under 45CSR30 for a period of three years from the  
19 effective date of the rule, with a possible extension of  
20 two years, two additional years. The sources which will be  
21 deferred consist of area sources, which are non-major  
22 sources, in a source category subject to requirements under  
23 §111 or §112 of the Clean Air Act, provided that an

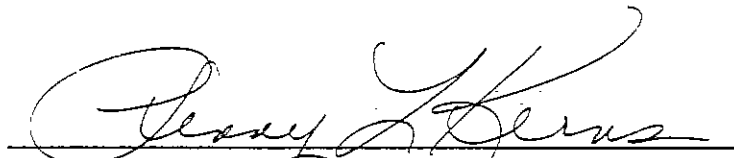


## REPORTER'S CERTIFICATE

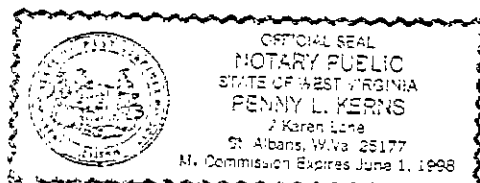
STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, To-wit:

I, Penny L. Kerns, Certified Court Reporter,  
do hereby certify that the foregoing is a correct verbatim  
record of the proceedings had and testimony taken at the  
time and place set forth herein.

Given under my hand this 21st day of July,  
1995.

  
Penny L. Kerns, CCR  
Notary Public

My commission expires June 1, 1998.



# PUBLIC HEARING

JULY 19, 1995

NAME	COMPANY AFFILIATION	ADDRESS
Kim Brown Poland	Robinson + McElwee	Charleston
Catherine Peck	Robinson + McElwee	Charleston
SARE BRADLEY	Thorne Poulenc	Institute
KARYN SCHMIOT	ROBINSON + MCELWEE	Charleston
Jack Pascoli	WV DOT	Charleston
CLAUDIA BANNER	AEP - APPALACHIAN POWER	ROANOKE, VA
PERRY KELLER	WV AOT	CHARLESTON
Robert Foster	WV Mfg Assoc.	Charleston
BOB PARSONS	JACKSON & KEELY	ETW
Wendy Rascliff	WV DEP	NITRD
TODD BRADLEY	WV DEP - OAS	Charleston
Fred Durham	WVAEP - OAS	Charleston



# SPEAKER'S LIST FOR PUBLIC HEARING

JULY 19, 1995

NAME	COMPANY AFFILIATION	ADDRESS
Ken Shaw	Small Business Underman LV-DEP	WV-CBA 1558 Washington State
Bob Foster	WV Mfg. Assoc.	Ches.
Wendy Raschke	Office Env. Advocate	N/A
Karyn Schmidt	Robinson + McElwee	Charleston.

# WEST VIRGINIA REGISTER



Published by Ken Hechler, Secretary of State

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*Volume XII*

*Issue 24*

*June 16, 1995*

*Pages 904 - 955*

*A Weekly Publication*

*Administrative Law Division*

*Judy Cooper  
Director*

*Missy Phalen  
Pam Reece  
Administrative Assistants*

*Secretary of State  
Administrative Law Division  
Bldg 1 Suite 157K  
190 Kanawha Blvd. E.  
Charleston, WV 25305-0770*

*(304)558-6000*

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- III. Price List*
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- V. Notices*
  - a. Legislative Rules*
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- X. Attorney General Opinions*
- XI. Other Documents or Information Filed*
- XII. Publication Deadlines and Publication Dates*

OTHER

**NOTICE OF PUBLIC HEARING**

On Monday, July 24, 1995 beginning at 6:00 p.m., the Office of Air Quality of the Division of Environmental Protection will hold a public hearing on a proposed revision to the State Implementation Plan (SIP) to attain and maintain attainment with the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide. The proposed plan revision primarily affects Ohio Power Company's Kammer Plant located near Moundsville in Marshall County, West Virginia and may also affect sulfur dioxide emission requirements for other facilities located in Marshall County and surrounding areas.

The purpose of this SIP revision is to demonstrate the attainment and maintenance of the 3-hour, 24-hour and annual National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO<sub>2</sub>) for the Kammer Plant. This proposed SIP revision shows the approvable emission limit for the Kammer Plant is 6.5 lbs/mmhd with a Good Engineering Practice (GEP) stack height of 900 ft. The proposed plan will allow the Kammer Plant to continue to burn locally available coal.

The Division of Environmental Protection proposes to enter into a Consent Order with Ohio Power Company's Kammer Plant to establish the new federal sulfur dioxide emission limits and other requirements as above noted. The proposed Consent Order in conjunction with supporting documentation and analyses will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the auditorium of the Delf Norona Museum, Grave Creek Mound State Park, 801 Jefferson Ave., Moundsville, West Virginia. Written and oral testimony by all interested parties will be accepted and made part of the record which will be closed at the conclusion of the public hearing.

Copies of the proposed SIP revision and the draft Consent Order for the Kammer Plant, and supporting documentation will be available for public review at the following locations on and after June 23, 1995:

- Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311
- Office of Air Quality  
Northern Panhandle Regional Office  
1911 Warwood Avenue  
Wheeling, WV 26003

If you have any questions or comments concerning the proposed rule please contact:

G. Dale Farley  
Chief, Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311

**FILED**  
**JUN 14 3 51 PM '95**  
**NOTICE OF PUBLIC HEARING**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

On Wednesday, July 19, 1995 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on the following proposed legislative and interpretive rules:

- 45CSR21 "Regulation to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds"
- 45CSR26 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR33 "Acid Rain Provisions and Permits"
- 45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"
- 45CSR30A "Deferral of Area Sources from Permitting Requirements" (Interpretive Rule)
- 45CSR30B "Identification and Counting of Fugitive Emissions in Major Source Determinations Under WV 45CSR30" (Interpretive Rule)

Upon authorization and promulgation of revisions to 45CSR21, the rule will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR26, the rules will be submitted to the U. S. Environmental Protection Agency as part of the State Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR33, the rule will be submitted to the U. S. Environmental Protection Agency for its approval of the Acid Rain Permit Program under Title IV of the Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR34, the Office of Air Quality will seek federal delegation from the U. S. Environmental Protection Agency to implement the revised standards.



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INTERPRETIVE

WEST VIRGINIA  
 SECRETARY OF STATE  
 KEN HECHLER  
 ADMINISTRATIVE LAW DIVISION  
 Form #1

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 OFFICE OF THE SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

DIVISION OF ENVIRONMENTAL PROTECTION  
 AGENCY: OFFICE OF AIR QUALITY TITLE NUMBER: 45CSR30A

RULE TYPE: INTERPRETIVE; CITE AUTHORITY WV CODE §822-5-1 et seq.  
 AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED:  
 TITLE OF RULE BEING AMENDED:

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 45CSR30A  
 TITLE OF RULE BEING PROPOSED: "DEFERRAL OF AREA SOURCES FROM

PERMITTING REQUIREMENTS"

DATE OF PUBLIC HEARING: JULY 19, 1995 TIME: 6:00 P.M.  
 LOCATION OF PUBLIC HEARING: WV OFFICE OF AIR QUALITY

CONFERENCE ROOM  
 1558 WASHINGTON STREET, EAST  
 CHARLESTON, WV 25311

COMMENTS LIMITED TO: ORAL, WRITTEN, BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: SAME AS ABOVE.

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA  
 SECRETARY OF STATE  
 KEN HECHLER  
 ADMINISTRATIVE LAW DIVISION  
 Form #1

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 OFFICE OF THE SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

DIVISION OF ENVIRONMENTAL PROTECTION  
 AGENCY: OFFICE OF AIR QUALITY TITLE NUMBER: 45CSR30B

RULE TYPE: INTERPRETIVE; CITE AUTHORITY WV CODE §822-5-1 et seq.  
 AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED:  
 TITLE OF RULE BEING AMENDED:

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 45CSR30B  
 TITLE OF RULE BEING PROPOSED: "IDENTIFICATION AND COUNTING OF

FUGITIVE EMISSIONS IN MAJOR SOURCE DETERMINATIONS UNDER WV 45CSR30"

DATE OF PUBLIC HEARING: JULY 19, 1995 TIME: 6:00 P.M.  
 LOCATION OF PUBLIC HEARING: WV OFFICE OF AIR QUALITY

CONFERENCE ROOM  
 1558 WASHINGTON STREET, EAST  
 CHARLESTON, WV 25311

COMMENTS LIMITED TO: ORAL, WRITTEN, BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: SAME AS ABOVE.

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

## AGENDA

**WV DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY  
CONFERENCE ROOM  
1558 WASHINGTON STREET, EAST  
CHARLESTON, WEST VIRGINIA**

**JULY 19, 1995  
6:00 P.M.**

I. PUBLIC HEARING ON PROPOSED LEGISLATIVE RULES

1. 45CSR21 "Regulation to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds"
2. 45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
3. 45CSR33 "Acid Rain Provisions and Permits"
4. 45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

II. HEARING ON PROPOSED INTERPRETIVE RULES

1. 45CSR30A "Deferral of Area Sources from Permitting Requirements" (Interpretive Rule)
2. 45CSR30B "Identification and Counting of Fugitive Emissions in Major Source Determinations Under WV 45CSR30" (Interpretive Rule)

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NOTICE OF PUBLIC HEARING

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

On Wednesday, July 19, 1995 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on the following proposed legislative and interpretive rules:

- 45CSR21 "Regulation to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds"
- 45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR33 "Acid Rain Provisions and Permits"
- 45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"
- 45CSR30A "Deferral of Area Sources from Permitting Requirements" (Interpretive Rule)
- 45CSR30B "Identification and Counting of Fugitive Emissions in Major Source Determinations Under WV 45CSR30" (Interpretive Rule)

Upon authorization and promulgation of revisions to 45CSR21, the rule will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR25, the rules will be submitted to the U. S. Environmental Protection Agency as part of the State Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR33, the rule will be submitted to the U. S. Environmental Protection Agency for its approval of the Acid Rain Permit Program under Title IV of the Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR34, the Office of Air Quality will seek federal delegation from the U. S. Environmental Protection Agency to implement the revised standards.

The hearing will be held in the Office of Air Quality's Conference Room located at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record. All questions and comments concerning the proposed rules should be directed to G. Dale Farley, Chief of the Office of Air Quality at the address below:

G. Dale Farley, Chief  
Office of Air Quality  
1558 Washington Street East  
Charleston, WV 25311-2599

Copies of the proposed legislative and interpretive rules will be available for public review on or before June 16, 1995 at the Office of Air Quality's Charleston office. The proposed legislative and interpretive rules, except for 45CSR21, will be available for public review on or before June 19, 1995 at the Office of Air Quality's regional offices located at 109 Adams Street, Room M-2, Fairmont; 1911 Warwood Avenue, Wheeling; and New Creek, WV.



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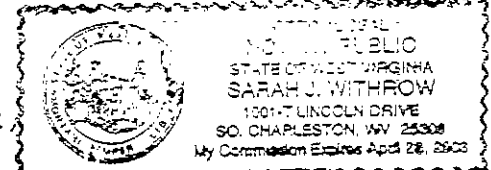
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			225450001			9.50	4.85	46.07		
06/17	LEGF	DM	PUBLIC HEARING		L249380	1X0950				
			225450001			9.50	4.85	46.07		92.14
TOTAL INVOICE AMOUNT										92.14

State of West Virginia,

## AFFIDAVIT OF PUBLICATION

I, Sandra Leas of THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER, THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER, published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the PUBLIC HEARING



was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County, West Virginia, on the 19TH day of JUNE 1995. Published during the following dates: 06/17/95-06/17/95  
 Subscribed and sworn to before me this 20 day of June  
 Printers fee \$ 92.14

Sarah J. Withrow  
 Notary Public of Kanawha County, West Virginia

Copies of the proposed legislative and interpretive rules will be available for public review on or before June 16, 1995 at the Office of Air Quality's Charleston office. The proposed legislative and interpretive rules, except for 45CSR21, will be available for public review on or before June 19, 1995 at the Office of Air Quality's regional offices located at 109 Adams Street, Room M-2, Fairmont; 1911 Warwood Avenue, Wheeling; and New Creek (249380) WV.

- NOTICE OF PUBLIC HEARING**  
 On Wednesday, July 19, 1995 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on the following proposed legislative and interpretive rules:
  - 45CSR21 "Regulation to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds"
  - 45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"
  - 45CSR33 "Acid Rain Provisions and Permits"
  - 45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"
  - 45CSR30A "Deferral of Area Sources from Permitting Requirements" (Interpretive Rule)
  - 45CSR30B "Identification and Counting of Fugitive Emissions in Major Source Determinations Under WV 45CSR30" (Interpretive Rule)
  - Upon authorization and promulgation of revisions to 45CSR21, the rule will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.
  - Upon authorization and promulgation of revisions to 45CSR25, the rules will be submitted to the U.S. Environmental Protection Agency as part of the State Hazardous Waste Management Program.
  - Upon authorization and promulgation of revisions to 45CSR33, the rule will be submitted to the U.S. Environmental Protection Agency for its approval of the Acid Rain Permit Program under Title IV of the Clean Air Act.
  - Upon authorization and promulgation of revisions to 45CSR34, the Office of Air Quality will seek federal delegation from the U.S. Environmental Protection Agency to implement the revised standards.
- The hearing will be held in the Office of Air Quality's Conference Room located at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record. All questions and comments concerning the proposed rules should be directed to G. Dale Farley, Chief of the Office of Air Quality at the address below:
- G. Dale Farley, Chief  
 Office of Air Quality  
 1558 Washington Street East  
 Charleston, WV 25301-7999

OAQ MAILING LIST FOR PUBLIC HEARINGS/MEETINGS

Mr. Larry Myers  
Allegheny Power Service Corp.  
800 Cabin Hill Drive  
Greensburg, Pennsylvania 15601

Mr. Brian Broderick  
BNA PLUS  
Bureau of National Affairs  
1231 25th Street, N.W.  
Washington, D.C. 20037

Mr. Greg Scandrett  
ERM Midwest  
5088 West Washington Street  
Charleston, WV 25313

Ms. Becky Fleming  
Charleston Daily Mail  
1001 Virginia Street, East  
Charleston, WV 25301

Mr. Norm Steenstra  
Environmental Coordinator  
West Virginia Citizen Action Group  
1324 Virginia Street, East  
Charleston, West Virginia 25301

Mr. Eric Niiler  
Charleston Gazette  
1002 Virginia Street, East  
Charleston, WV 25301

Ms. Joline Brady  
103 Timberlake Circle  
Scott Depot, WV 25560

Ms. Mildred Holt  
P. O. Box 367  
Institute, WV 25112

Ms. Lillian Erskin  
52 Bailes Drive  
Nitro, WV 25143

Ms. Suzanne Tenkhoff  
National Institute for Chemical Studies  
Nitro/St. Albans Committee  
31 Bailes Drive  
Nitro, West Virginia 25143

Mr. Ray de Bolt  
Fire Chief  
Charleston Fire Department  
808 Virginia Street, West  
Charleston, WV 25302

The Honorable William Croye  
Mayor, City of Belle  
National Institute for Chemical Studies  
Upper Kanawha Valley Committee  
110 East DuPont Avenue  
Belle, West Virginia 25015

Dr. Paul Hill, President  
National Institute for Chemical Studies  
University of Charleston  
2300 MacCorkle Avenue, S.E.  
Charleston, West Virginia 25304

Mr. Tim Carroll  
Regional Office Supervisor  
Northern Panhandle Regional Office  
WV Office of Air Quality  
1911 Warwood Avenue  
Wheeling, West Virginia 26003

Mr. William Taylor  
Regional Engineer  
North Central Regional Office  
WV Office of Air Quality  
109 Adams Street, Room M-2  
Fairmont, WV 26554-2800

Mr. Robert Parsons  
Jackson & Kelly  
1600 Laidley Tower  
Charleston, WV 25301

Mr. Ira H. Dorfman  
Vice-President, Energy & Environment  
Ryan-McGinn  
2300 Clarendon Blvd., Suite 610  
Arlington, VA 22201

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6128 Gideon Road  
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Charleston, WV 25301

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Eastern Panhandle Regional Office  
P. O. Box 99  
New Creek, WV 267143

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10 McJunkin Road  
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Charleston, WV 25302

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Dunbar, WV 25064

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Air Program Manager  
Engineering-Science, Inc.  
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Public Information Officer  
WV Division of Environmental  
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Aristech Chemical Company  
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Pittsburgh, PA 15219

Ms. Liz Schiffer  
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Charleston, WV 25311

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Energy  
P.O. Box 6064  
Morgantown, WV 26506-6064

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Citizens Action Group  
1324 Virginia Street, East  
Charleston, WV 25301

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Water Quality Advisory  
Committee  
251 Laurel Street  
Morgantown, WV 26505

Ms. Cindy Rank  
WV Highland Conservancy  
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Rock Cave, WV 26234

Coal Outlook  
1616 N. Fort Myer Drive  
Suite 1000  
Arlington, VA 22209

Coal Association  
1301 Laidley Tower  
Charleston, WV 25301

WVMRA  
1624 Kanwaha Blvd.  
Charleston, WV 25311

Mr. Larry George  
Barth, Thompson & George  
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Charleston, WV 25321

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Lewisberry, PA 17339-9537

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VA Environmental Endowment  
Three James Center  
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Richmond, Va 23206

Pete Pitsenbarger  
WVDEP  
Abandoned Mine Lands  
Nitro, WV 25143

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Office of Water Resources  
1201 Greenbrier Street  
Charleston, WV 25311

Dale Farley  
Office of Air Quality  
1958 Washington Street, E.  
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Ted Streit  
WVDEP  
Oil & Gas  
Nitro, WV 25143

John Ailes  
WVDEP  
Mining & Reclamation  
Nitro, WV 25143

Jerome Ashton  
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1170 National Press Bldg.  
Washington, D.C. 20048

WVDEP  
Region 1  
109 Adams Street  
Fairmont, WV 26554-2800

WVDEP  
Region 2  
105 South Railroad Street  
Philippi, WV 26416-9998

WVDEP  
Region 3  
116 Industrial Drive  
Oak Hill, WV 25901-9714

WVDEP  
Region 4  
331 Court Street  
Welch, WV 24801-2311

WVDEP  
Region 5  
525 Tiller Street  
Logan, WV 25601-3438

WVDEP  
District 1  
1304 Goose Run Road  
Fairmont, WV 26554

WVDEP  
District 2  
#1 Depot Street  
Romney, WV 26757

WVDEP  
District 3  
P.O. Box 38  
French Creek, WV 26218

WVDEP  
District 4  
General Delivery  
MacArthur, WV 25873

WVDEP  
District 5  
694 Winfield Road  
St. Albans, WV 25177

Harrison County ECO  
P.O. Box 2113  
Clarksburg, WV 26302

Millie Johnson  
Toyota Motor Sales, USA, Inc.  
1850 M Street, NW  
Suite 600  
Washington, DC 20036

John Wolmack  
IOGA of WV  
410 Washington Street, East  
Charleston, WV 25301-1522

WV Press Association  
 3422 Pennsylvania Ave.  
 Charleston, WV 25302

The Logan Banner  
 437 Stratton Street  
 Logan, WV 25601

WVVA-TV  
 P. O. Box 1930  
 Bluefield, WV 24701

Charleston Gazette  
 1001 Virginia Street, E.  
 Charleston, WV 25301

Dominion Post  
 Rt. 7 Greer Building  
 Morgantown, WV 26505

WDTV-TV  
 5 TV Drive  
 Bridgeport, WV 26330

Charleston Daily Mail  
 1001 Virginia Street, E.  
 Charleston, WV 25301

Parkersburg News  
 519 Juliana Street  
 Parkersburg, WV 26101

WOWK - TV  
 P. O. Box 13  
 Huntington, WV 25706-0013

The Register/Herald  
 301 N. Kanawha Street  
 Beckley, WV 25801

Parkersburg Sentinel  
 519 Juliana Street  
 Parkersburg, WV 26101

WSAZ-TV  
 Charleston Bureau  
 111 Columbia Ave.  
 Charleston, WV 25302

Bluefield Daily Telegraph  
 928 Bluefield Ave.  
 P. O. Box 1599  
 Bluefield, WV 24701

Point Pleasant Register  
 200 Main Street  
 Point Pleasant, WV 25550

WBOY-TV  
 P.O. Box 1590  
 Clarksburg, WV 26302

Morning Herald  
 100 Summitt Avenue  
 Hagerstown, MD 21740

Weirton Daily Times  
 114 Lee Ave.  
 Weirton, WV 26062

WTAP-TV  
 #1 Television Plaza  
 Parkersburg, WV 26101

Exponet  
 324-326 Hewes Ave.  
 Clarksburg, WV 26301

Wheeling Intelligencer  
 1500 Main Street  
 Wheeling, WV 26003

WTRF-TV  
 P.O. Box 6667  
 Wheeling, WV 26003

Telegram  
 324-326 Hewes Ave.  
 Clarksburg, WV 26301

Wheeling News Register  
 1500 Main Street  
 Wheeling, WV 26003

WQBE  
 Box 871  
 Charleston, WV 25323

Times - West Virginian  
 Quincy - Ogden Ave.  
 P. O. Box 2530  
 Fairmont, WV 26554

Williamson Daily News  
 100 Block E. 3rd Ave.  
 P. O. Box 1660  
 Williamson, WV 25661

WYVN-TV  
 P.O. Box 2089  
 Martinsburg, WV 25401

The Herald Dispatch  
 P. O. Box 2017  
 Huntington, WV 25720

The Morning Journal  
 207 W. King Street  
 Martinsburg, WV 25401

WEPM  
 1606 W. King Street  
 Martinsburg, WV 25401

Mineral Daily News-Tribune  
 P. O. Box 879  
 Keyser, WV 26726

The Inter-Mountain  
 520 Railroad Ave.  
 Elkins, WV 26241

The Morgan Messenger  
104 Mercer Street  
P.O. Box 567  
Berkeley Springs, WV 25411

Record-Delta  
7 N. Locust Street  
Buckhannon, WV 26021

The Pendleton Times  
P.O. Box 906  
Franklin, WV 26807

Preston County Journal  
Preston County News  
P.O. Box 587  
Kingwood, WV 26537

Bramwell Aristocrat  
Bank Building  
Bramwell, WV 24715

The Gilbert Times  
P.O. Box 1135  
Gilbert, WV 25621

Post Report  
204 C. W. Washington Street  
Lewisburg, WV 24907

The Glenville Democrat  
The Glenville Pathfinder  
P.O. Box 458  
Glenville, WV 26351-0458

The Greenbrier Valley  
Ranger  
P.O. Box 471  
Lewisburg, WV 24901

Guyandotte Voice  
P.O. Box 4508  
Chapmanville, WV 25508

Coal Valley News  
P.O. Box 508  
Madison, WV 25130

The State Journal  
P.O. Box 28  
Charleston, WV 25321

The Calhoun Chronicle and  
Grantsville News  
P.O. Box 400  
Grantsville, WV 26147

Hometown News  
P.O. Box 597  
Madison, WV 25130

West Virginia Beacon  
P.O. Box 981  
Charleston, WV 25324

The Lincoln Journal  
The Weekly News Sentinel  
P.O. Box 308  
Hamlin, WV 25523

The Pocahontas Times  
P.O. Box 117  
Marlinton, WV 24954

Spirit of Jefferson  
Advocate  
P.O. Box 966  
Charles Town, WV 25414

The Ritchie Gazette  
P.O. Box 215  
Harisville, WV 26362

Hinton News  
P.O. Box 1000  
Hinton, WV 25951

Cabell Record  
911 3rd Avenue, Suite 2  
Huntington, WV 25701

The Clay Herald  
Route 4, Box 5  
Clay, WV 25043

Hurricane Breeze  
P.O. Box 336  
Hurricane, WV 25526

The Montgomery Herald  
P.O. Box 240  
Montgomery, WV 25136

Wirt County Journal  
P.O. Box 309  
Elizabeth, WV 26143

Industrial News  
P.O. Box 180  
Iaeger, WV 24844

The Moorefield Examiner  
P.O. Box 380  
Moorefield, WV 26836

The Mullens Advocate  
217 Moran Avenue  
Mullens, WV 25882

Princeton Times  
1101 Mercer Street  
Princeton, WV 24740

Roane County Reporter  
P.O. Box 647  
Spencer, WV 25276

Hancock County Courier  
P.O. Box 547  
New Cumberland, WV 26047

Times Record  
P.O. Box 647  
Spencer, WV 25276

Wetzel Chronicle  
P.O. Box 289  
New Martinsville, WV 26155

The Jackson Star News  
P.O. Box 10  
Ravenswood, WV 26164

The Nicholas Chronicle  
P.O. Box 503  
Summersville, WV 26651

The Valley Press  
Twin City Press  
P.O. Box 8  
Nitro, WV 25143

The News Leader  
P.O. Box 591  
Richwood, WV 26261

Braxton Citizen's News  
P.O. Box 316  
Sutton, WV 26601

Fayette Tribune  
P.O. Box 139  
Oak Hill, WV 25901

West Virginia Hillbilly  
P.O. Box 430  
Richwood, WV 26261

Braxton Democrat-Central  
P.O. Box 427  
Sutton, WV 26601-1399

Parsons Advocate  
212 Main Street  
Parsons, WV 26287

The Jackson Herald  
P.O. Box 31  
Ripley, WV 25271

The Monroe Watchman  
P.O. Box 179  
Union, WV 24983

Pennsboro News  
P.O. Box 368  
Pennsboro, WV 26415

Hampshire Review  
P.O. Box 1036  
Romney, WV 26757

Wayne County News  
Tri-State Sunday  
310 Central Avenue  
Wayne, WV 25570

Grant County Press  
P.O. Box 39  
Petersburg, WV 26847

St. Albans Community News  
P.O. Box 1000  
St. Albans, WV 25177

The Webster Echo  
P.O. Box 749  
Webster Springs, WV 26288

Barbour Democrat  
P.O. Box 459  
Philippi, WV 26416

St. Marys Oracle  
P.O. Box 27  
St. Marys, WV 26170

The Webster Republican  
P.O. Box 749  
Webster Springs, WV 26288

The Piedmont Herald  
P.O. Box 68  
Piedmont, WV 26750

The Shinnston News  
P.O. Box 7  
Shinnston, WV 26431

The Brooke News  
The Follansbee Reiview  
P.O. Box 591  
Wellsburg, WV 26070

Independent Herald  
P.O. Box 100  
Pineville, WV 24874

Tyler Star News/County  
Journal  
P.O. Box 191  
Sistersville, WV 26175

Weston Democrat  
P. O. Box 968  
Weston, WV 26452

Weston Democrat  
P.O. Box 968  
Weston, WV 26452

SEP- 6-84 TUE 15:45

DEP NITRO W. VA

FAX NO. 3047590526

P.06

The Herald Record  
202 E. Main Street  
West Union, WV 26456

The Catholic Spirit  
P.O. Box 951  
Wheeling, WV 26003

The Putnam Democrat  
P.O. Box 179  
Winfield, WV 25213

WV DIV OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

1995 JUL 13 P 3:49

RECORDED

**Mr. K.O. Damron**

\*\*\*\*\*

*Submits the following Comments,*  
this 12th day of July, 1995,  
on behalf of the

**West Virginia Mining and  
Reclamation Association**

1624 Kanawha Blvd., E, Charleston, WV 25311

and the

**West Virginia Coal  
Association**

1301 Laidley Tower, Charleston, WV 25301

\*\*\*\*\*

**in response to**  
The Proposed Interpretative Rule  
(Three Year Deferral Period)  
45 CSR Series 30A,  
Division of Environmental Protection,  
Office of Air Quality

Mr. K.O. Damron, Vice President, West Virginia Mining & Reclamation Association submits the following comments, this 12th day of July, 1995, in response to the Proposed Interpretative Rule, (Identification and Counting of Fugitive Emissions) 45 CSR Series 30B, Division of Environmental Protection, Office of Air Quality:

Page 1 of 2

## **I. ABOUT THE PUBLIC COMMENT OPPORTUNITY:**

### **A. OUR REPRESENTATION:**

The West Virginia Mining and Reclamation Association and the West Virginia Coal Association represent over 400 coal producing companies and associate member companies who provide products and services to the coal industry. Our comments on this proposed regulation are on behalf of all of the members of the WVMRA and the WVCA.

### **B. OUR APPRECIATION FOR THIS OPPORTUNITY:**

We are grateful for this opportunity to offer comments on this proposed interpretative rule.

## **II. BACKGROUND ON THE WEST VIRGINIA COAL INDUSTRY:**

The coal mining industry in West Virginia produces hundreds of millions of tons of high quality coal for domestic and foreign use as an energy source for the production of electricity, steel and a host of other applications. Employment directly in West Virginia mines and indirectly in the mining support trades and the hundreds of millions of dollars of taxes generated by coal related sources are the **economic backbone** of the Mountain State.

A recent study found that one out of every ten payroll dollars in West Virginia comes from the coal industry. It was further revealed that one of every three business tax dollars being collected by the State comes directly from the coal industry.

Every influence which alters the production of West Virginia coal changes the fragile **competitive balance** between coal mines here and coal mines in other coal producing states and other nations. Therefore, changes in the governmental regulations affecting this industry must be made with the potential negative impacts of those changes foremost in the minds of those considering such changes.

Mr. K.O. Damron, Vice President, West Virginia Mining & Reclamation Association, submits the following comments, this 12th day of July, 1995, in response to the Proposed Interpretative Rule (Three Year Deferral Period) 45 CSR Series 30A, Division of Environmental Protection, Office of Air Quality:

Page 2 of 2

### **III. OUR COMMENTS ABOUT THE PROPOSED INTERPRETATIVE RULE:**

#### **A. WE RECOMMEND IMPLEMENTATION OF THE INTERPRETATIVE RULE:**

The Clean Air Act of 1970 (with amendments) imposes a tremendous burden on the coal industry. Title IV alone has changed the production and burning activities for millions of tons of West Virginia coal. Now comes Title V and its requirements.

This proposed deferral period of three years is certainly in order. In fact a deferral period of greater than three years would be in order considering the minor impact on the environment by our industry's preparation plants and loading facilities.

#### **IV. SUMMARY:**

We recommend implementation of the three year deferral period as proposed by the Division of Environmental Protection.

We are grateful to DEP Director Eli McCoy and OAQ Director Dale Farley for their interest and understanding of the coal industry's impact on air quality, and particularly grateful to OAQ Title V specialists Rick Atkinson and Lisa McClune for their direct assistance towards insuring our companies are educated and in compliance with the applicable provisions of Title V.

(end of comments)

Appalachian Power Company  
PO Box 2021  
Roanoke, VA 24022-2121  
703 985 2300

WV DIV OF ENVIRONMENTAL PROTECT.  
OFFICE OF AIR QUALITY

1995 JUL 19 A 10:04

RECEIVED



Mr. G. Dale Farley, Chief  
West Virginia Division of Environmental Protection  
Office of Air Quality  
1558 Washington Street, East  
Charleston, West Virginia 25311

Re: 45 CSR 30A

July 18, 1995

Dear Mr. Farley:

Appalachian Power Company supports the proposed 45 CSR 30A - Deferral of Area Sources from Permitting Requirements."

Deferring the area sources will allow the Office of Air Quality and industry to concentrate their resources on Title V major source permits and make that aspect of the permitting program the best it can be.

Any questions concerning these comments should be directed to this office at (540) 985-2787.

Sincerely,

A handwritten signature in cursive script that reads "Robert J. Robinson".

Robert J. Robinson  
Environmental Affairs Director

RJR:d



# WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311

Telephone: (304) 342-2123

FAX: (304) 342-4552

July 19, 1995

G. Dale Farley, Chief  
Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311

Re: 45 CSR 30A, "Deferral of Area  
Sources From Permitting Requirements."

Dear Chief Farley:

The West Virginia Manufacturers Association wishes to support and endorse proposed 45 CSR 30A, the OAQ's interpretive rule which serves to defer minor sources from the operating permit requirements of 45 CSR 30 under Title V of the Clean Air Act Amendments. We believe it is entirely appropriate to focus first on the state's major sources, and leave the minor ones to the current permit and control programs.

Due to the heavy administrative burden on the OAQ which we believe will result from 45 CSR 30, however, we believe that a full five-year deferral period is justified rather than three, with possible extensions. Also, for those minor sources that "opt in" for a Regulation 30 permit, we suggest that section 4.3 be revised to allow such a permit application to be filed at any time during the deferral period, not on the schedule in Regulation 30 for major sources. There is no reason to artificially regiment "opting-in" to only set times or to only within the first effective year of Regulation 30.

The Manufacturers appreciate this opportunity to provide our comments on this proposed rule.

Sincerely,

Robert L. Foster, Chairman  
Environment, Safety  
& Health Committee

cc: Karen S. Price, President, WVMA

#### *Board of Director Members*

3M Company	The Dean Company	Employers Service Corporation	Miles Inc.	TERRADON Corporation
Ashland Chemical Inc.	Downard Hydraulics, Inc.	Haitown Paperboard Co.	Monsanto Company	U.S. Silica Company
BASF Corporation	DuPont	Helme Tobacco Company	P&WC Aircraft Services, Inc.	Union Carbide Corporation
Capitol Cement Corporation	Eagle Manufacturing	Kanawha Manufacturing Co.	PPG Industries, Inc.	W.M. Cramer Lumber Co.
Corning Incorporated	EIMCO	Koppers Industries, Inc.	Ravenswood Aluminum Corp.	Weirton Steel Corporation
Cytec Industries	Elkem Metals Company	Marble King, Inc.	Rhone-Poulenc Ag Company	Wheeling-Pittsburgh Steel Corp.



WV DIV  
OFFICE OF AIR QUALITY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building

Philadelphia, Pennsylvania 19107-4431

1995 JUL 24 P 12:31

RECEIVED

JUL 21 1995

G. Dale Farley, Chief  
Division of Environmental Protection  
Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311-2599

Dear Mr. Farley:

On June 22, 1995, the West Virginia Division of Environmental Protection, Office of Air Quality (OAQ), submitted a limited rule package to EPA, Region III (EPA) for review and comment. The regulations pertinent to the Permits Program Section include 45CSR30A, 45CSR30B, 45CSR33, and 45CSR34. After staff level review of these rules, EPA's comments are outlined below:

45CSR30A "Deferral of Area Sources from Permitting Requirements"

- 1 - Section 4.3 appears to limit deferred sources from the ability to "opt-in" to the 45CSR30 program after the dates in section 45CSR30.4.1.a have passed. Part 70 does not limit the time by which deferred sources may "opt-in".
- 2 - Regarding Section 5.1, certain sources currently deferred from the obligation to obtain a permit may be ultimately exempted from permitting.

45CSR30B "Identification and Counting of Fugitive Emissions in Major Source Determinations Under WV 45CSR30"

- 1 - Sections 3.1, 3.3, and 3.5 provide that only "affected facilities" at a source in a source category regulated by a section 111 or 112 standard need to consider fugitives in making major source determinations. See enclosed materials.
- 2 - Regarding Section 4.2, EPA suggests that the provision be modified to clarify that for purposes of determining whether a source is a major source as defined in Part D of Title I of the Clean Air Act (nonattainment areas), many sources already need to consider fugitives as they belong to source categories that have been designated to do so pursuant to 302(j) (i.e. sources required by section 302(j) to count fugitives must do so regardless of the attainment status of the area).

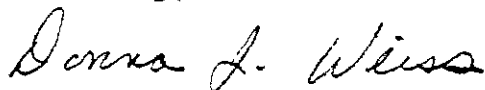
45CSR34 "Emissions Standards for Hazardous Air Pollutants  
Pursuant to 40 CFR Part 63"

- 1 - Regarding Sections 2.1 and 2.2 of 45CSR34, OAQ should note that EPA recognizes that states need lead time to be able to implement the modification provisions contained in section 112(g). EPA published an interpretive notice in February 1995 advising states that they are not required to implement the modification provisions until EPA issues the final rule. EPA's current plan is to issue the final rule in early 1996.
- 2 - For administrative efficiency, EPA suggests that Sections 3.1 and 3.2 allow for delegation to a designated representative.
- 3 - Section 4.1.a of 45CSR34 amends 40 C.F.R. § 63.15. This section addresses information available to the public and confidentiality. Does this amendment restrict the public's access to information beyond what 40 C.F.R. § 63.15 allows?
- 4 - Regarding Section 4.1.b of 45CSR34, OAQ should note that Section 112(r) of the CAA must be, at a minimum, implemented and enforced for Title V sources. EPA does not believe that the Risk Management Plan (RMP) be included in the permit, but the submission of the RMP to the implementing agency should be considered a reporting requirement. In addition, EPA believes that the 112(r) program is best implemented at the state and local level and encourages states to seek delegation of the program in the future for all sources (i.e., Title V and non-Title V sources).
- 5 - OAQ should note that Sections 5.1.m and 5.1.n of 45CSR34 contain identical references to 40 C.F.R. Part 63.
- 6 - OAQ should note that the following sections of 45CSR34 appear to contain incorrect references to 40 C.F.R. Part 63: 5.1.h; 5.1.i; 5.1.j; 5.1.o; 5.1.z; 5.1.ac; 5.1.ad; 5.1.af; and, 5.1.ag.

At this time, EPA has no comments on 45CSR33. Please be aware that with respect to the proposed 45CSR30 interpretive rulemakings, 40CSR30A and 45CSR30B, EPA will not consider such regulations to be part of West Virginia's Title V program unless they are formally submitted to EPA as such.

Thank you for the opportunity to review and comment. If you have any questions or require additional information, please contact Jennifer Abramson at (215) 597-2923 or James Cashel at (215) 597-1260.

Sincerely,

A handwritten signature in cursive script that reads "Donna J. Weiss".

Donna J. Weiss, Chief  
Permit Programs Section

Enclosures



WYOMING DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
RESEARCH TRIANGLE PARK, NC 27711  
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OFFICE OF  
AIR QUALITY PLANNING  
AND STANDARDS

MEMORANDUM

SUBJECT: EPA Reconsideration of Application of Collocation Rules to Unlisted Sources of Fugitive Emissions for Purposes of Title V Permitting

FROM: Lydia N. Wegman, Deputy Director *Steve Holtz*  
Office of Air Quality Planning and Standards (MD-10)

TO: Regional Air Directors  
Regions I - X

The purpose of this memorandum is to provide you with guidance regarding the collocation language of the part 70 "major source" definition as it relates to sources of fugitive emissions that have not been listed pursuant to section 302(j) of the Clean Air Act (Act). Rulemaking will be needed to incorporate the ideas in this memo, and the preamble will address transition period concerns.

As you may know, the American Mining Congress (AMC) and the American Forest and Paper Association (AFPA) petitioned for review of the part 70 rule, in part because the Agency's interpretation of the part 70 collocation language would have the effect of subjecting unlisted sources of fugitive emissions to the permit rule. While not conceding the merits of the petitioners' arguments, EPA sought and received from the U. S. Court of Appeals for the District of Columbia Circuit a voluntary remand to allow the Agency to reconsider its interpretation in the context of a new rulemaking.

In moving the Court for a remand, EPA stated that until it completes the rulemaking, the Agency's interpretation of the part 70 collocation language as set forth in previous rulemaking documents and guidance is not binding and therefore rescinded. The Agency further provided that it would issue guidance to EPA Regions and State permitting authorities stating the same and explaining that States thus have discretion in interpreting the part 70 collocation language with regard to unlisted sources of fugitive emissions. This memorandum provides that guidance.

The part 70 rule defines "major source" as "any stationary source (or group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person . . .) belonging to a single industrial grouping" and that is a major source under section 112 or a major stationary source under section 302 or part D of title I of the Act (40 CFR §70.2). In accordance with section 502(a) of the Act, the rule requires specified categories of sources, including all "major sources," to obtain and comply with operating permits (40 CFR § 70.3(a)).

The Agency stated in the part 70 rulemaking that the Agency intended to apply the collocation language of the title V rule to unlisted sources of fugitive emissions in the same manner as it applies identical language to those sources in the regulations governing the New Source Review (NSR) program under title I of the Act.<sup>1</sup> Specifically, the Agency stated that for purposes of making major source determinations under title V, unlisted sources of fugitive emissions would be grouped with adjacent, commonly controlled sources where the fugitive emission source was within the same major industrial grouping as the collocated source or was a support facility for the collocated source. In short, the collocation language of the part 70 major source definition required aggregation of collocated sources regardless of whether a collocated source was an unlisted source of fugitive emissions.

The petitioners raised concerns with the Agency's interpretation of the collocation language of the part 70 rule as it applied to unlisted sources of fugitive emissions. They contended that such sources are not to be regulated as "major sources" under title V unless and until EPA determines through rulemaking under section 302(j) that the benefits of such regulation would outweigh the costs. Section 302(j) defines major stationary source and major emitting facility as a facility that has the potential to emit 100 tons per year (tpy) or more of any air pollutant. It further provides that fugitive emissions be included in determining whether a source exceeds the 100 tpy major source threshold as determined by rule by the Agency. Petitioners argued that the Agency's interpretation of the collocation language would have the effect of subjecting unlisted fugitive emission sources to the permit rule without undertaking section 302(j) rulemaking.

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<sup>1</sup> The Agency set forth this interpretation in the preamble to the proposed rule, the response to comments document for the final rule, subsequent guidance documents, and the August 29, 1994 proposal to revise certain portions of the part 70 rule.  
[ADD CITES]

The petitioners contended that the Agency's interpretation would have this effect in three ways. First, an unlisted source located next to a commonly controlled source having the same two-digit Standard Industrial Classification (SIC) code as the unlisted source would be aggregated with the collocated source. If the collocated source on its own were major for title V purposes, then the unlisted source would be subject to the permit rule as part of the aggregated major source.

Second, an unlisted fugitive emissions source could become part of a title V major source as a result of the support facility test the Agency stated it would apply in making major source determinations under title V as it does under NSR. Under the support facility test, if an unlisted source of fugitive emissions primarily supports an adjacent, commonly controlled source that is major for title V purposes, it would be aggregated with the collocated source even if it had a different two-digit SIC code. The petitioners further argued that requiring the aggregation of sources with different two-digit SIC codes was contrary to Congressional intent.

Third, the fugitive emissions from an unlisted source might be included in the major source threshold calculation as a result of the primary activity test which the Agency also applies in the NSR context. That test provides that the primary purpose of a source determines the source category to which the source belongs. If the source belongs to a source category that has been listed under section 302(j), petitioners are concerned that all of the emissions of the source, including the fugitive emissions from the constituent unlisted source, would be counted in determining whether the source is major. Thus, if an unlisted fugitive emission source is part of a larger source that belongs to a listed source category, the unlisted source's fugitive emissions would count towards whether the encompassing source is major. If total emissions exceed the major source threshold, then the unlisted source would become subject to the permit rule along with the larger source of which it is part.

In adopting its interpretation of the part 70 collocation language as set forth in the title V rulemaking, the Agency explained that it was following the approach used in NSR to determine whether collocated sources should be aggregated for purposes of determining whether a major source is present. Adoption of the NSR approach was particularly appropriate, the Agency noted, in view of legislative history indicating that Congress intended the Agency to use that approach (56 Federal Register 21712, 21724 (1991)). However, after reviewing petitioners' arguments and the rulemaking record, the Agency believes it should review whether application of the NSR approach is appropriate for title V purposes.

It is important to point out, though, that EPA is not reconsidering or rescinding its interpretation of the collocation provisions of the NSR regulations with respect to unlisted sources of fugitive emissions. As indicated above, the NSR rules require an unlisted source of fugitive emissions be grouped with an adjacent, commonly controlled source in determining whether a major source is present if the unlisted source has the same two-digit SIC code as the collocated source or primarily supports the collocated source. The fugitive emissions of the unlisted source are not counted in determining whether the major source threshold is exceeded except as required by the primary activity test.

Industry previously sought and received rulemaking consideration of the issue of whether surface coal mines, an unlisted source of fugitive emissions, should be aggregated with adjacent, commonly controlled sources in determining whether a major stationary source is present for NSR purposes. (See 54 *Federal Register* 48870 (1989)). The Agency determined in a final action that such sources should be aggregated with collocated sources if they share the same two-digit SIC code or primarily support the collocated source. The Agency explained that section 302(j) requires rulemaking only to determine whether a source's fugitive emissions should be counted in determining whether the source's total emissions exceed major stationary source thresholds. Section 302(j) does not require rulemaking to determine whether a source of fugitive emissions may be considered part of a single major stationary source made up of collocated, commonly controlled sources. No one sought judicial review of this aspect of the Agency's final rule.

It is also important to point out that the Agency's decision to reconsider its interpretation of the collocation language of the part 70 rule does not affect the title V requirement that sources permitted under NSR (either pursuant to part C or part D of title I of the Act) obtain title V permits. Section 502(a) specifies that part C or D permitted sources, among others, are subject to the title V permitting requirement. Sources having part C or D permits therefore must apply for and obtain title V permits regardless of whether they include unlisted sources of fugitive emissions, and the title V permit must cover, at a minimum, all portions of the adjacent, commonly controlled facility covered by the part C or D permit. As noted above, the Agency's reconsideration of the proper interpretation of the collocation provisions of the part 70 rule does not extend to the NSR rules, so there is and will be no basis for exempting unlisted sources of fugitive emissions that are permitted under parts C or D from the title V permitting requirement. Further, sources that are not now but later become subject to title V by virtue of receiving a part C or D permit will be required to obtain a part 70 permit regardless of whether they include an unlisted source of fugitive emissions as required by the NSR collocation provisions.

The Agency, in requesting a remand to reconsider its interpretation of the part 70 collocation language, did not rescind the collocation portion of the rule itself. The rule's collocation language remains in effect; only EPA's interpretation of it is no longer binding. States must thus apply that portion of the rule in developing and implementing their part 70 programs. Absent a binding EPA interpretation, however, States have discretion in interpreting what the rule's collocation language requires with respect to unlisted sources of fugitive emissions.

As noted earlier, EPA expects to address the issues described in this memorandum in a proposal regarding revisions of the part 70 rule that it anticipates issuing in the near future.

Please share this memorandum with your State air programs. Should there be questions, please call Steve Hitte at (919) 541-0886.

cc: Regional Title V Contacts, Regions I-X  
B. Kellam (MD-12)  
S. Hitte (MD-12)  
N. Ketcham-Colwill (2442)  
D. Solomon (MD-12)  
M. Trutna (MD-12)



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500  
DENVER, COLORADO 80202-2466

Ref: 8ART-AP

February 24, 1995

Mr. Charles A. Collins, Administrator  
Wyoming Air Quality Division  
Department of Environmental Quality  
122 West 25th Street - Herschler Building  
Cheyenne, WY 82002

Dear Chuck:

Regarding your request about whether coal truck dumps are part of the source category "Coal Preparation Plants" covered in Subpart Y of the New Source Performance Standards (NSPS), we have reviewed previous determinations, background documents, preamble to the regulations, relevant letters, and discussed the issue with headquarters. Based on the information contained in these documents, truck coal dump operations are not affected facilities subject to the NSPS Subpart Y regulations. However, your question really goes to the issue of determining the applicability of coal preparation plants as major sources under Part 70 regulations and whether fugitive emissions from coal truck dumps should be included as part of the source category. The Part 70 regulations require the inclusion of fugitive emissions of a stationary source category, which is being regulated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category. Coal dump operations are considered part of the source category "coal preparation plants", if they are located at the site of the coal preparation plant. Therefore, all fugitive particulate emissions occurring at the coal preparation plant must be included along with all point source emissions to determine if the source is major. The inclusion of fugitive particulate emissions would not be only from coal dump operations but from all quantifiable fugitive particulate emission operations located at the source category (coal preparation plant).

To support our determination, we would like to quote some statements from several documents that pertain to this situation. In the following documents, I have emphasized those words that deal with truck dump operations.

(1) Extractions from a document entitled "A Review of Standards of Performance for New Stationary Sources - Coal Preparation Plants", dated December 1980. Since I understand that you do not have a copy of this document, I have attached a copy.

(page 3-1) - Coal storage and *transfer operations* are governed by the NSPS only if they form a part of the coal preparation facility; isolated coal storage and *transfer stations* are excluded. Open coal storage piles are currently excluded from the definition of coal storage systems.



(page 4-20) - Table of "Fugitive Emissions From Coal Preparation Plants"

<u>Probable source</u>	<u>Potential control methods</u>
<i>Coal transport to and from plant</i>	Cover rail cars, <i>trucks or conveyors</i>
Coal storage piles	Use silos, wet suppression, build windbreakers
Stack/reclaimer	Cover conveyor, hood reclaim
Coal conveyors	Cover conveyors, hood transfer
Crushing and screening building	Enclose and treat building vents, hood transfer points
Waste storage	Use silos, wet suppression, build windbreakers, use vegetative cover

(page 6-3) - Another unregulated source of fugitive emissions is *coal unloading or receiving stations*. Although loading systems are included in standards of performance, *coal unloading systems* were not mentioned as affected facilities. *Unloading stations* may be significant sources of fugitive dust emissions because of the large volumes of coal handled, often without adequate controls. Many coal preparation plants are served by conveyors from mine mouths, and *coal unloading* is considered to be in another source category.

(2) Extractions from a document entitled "Inspection Manual for the Enforcement of New Source Performance Standards: Coal Preparation Plants", dated December 1976:

(pages 4-26 & 4-27) - All emission sources are subject to opacity regulations and two are subject to particulate count regulations . . . Emission points in the various sections are shown in the appropriate diagrams. The most commonly used control devices for each emission point are keyed as follows:

- (1) Cyclone
- (2) Scrubber
- (3) Spray
- (4) Baghouse or fabric filter
- (5) Enclosure

These parenthetical numbers are used in the following tabulation relating emission sources and their controls.

**Coal Handling Facilities**

- RR and mine dumps - 2,3,5
- Truck dumps* -2,3,5
- Storage bins and silos - 4,5
- Breakers and crushers - 3,4,5
- Conveyor transfer points - 3,4,5
- Screens - 4,5
- Trucks, RR car and barge loading stations - 1,4,5

(page 6-12 & 13) - The dust emission problems involved at *stations for unloading of the ROM coal* naturally are similar to those at loading stations. *Truck dump bins* sometimes are partially enclosed. Sheeting may be absent from these enclosures, either deliberately or by accident. Many such bins have no dust control system. Any hooded dust control must allow for very high airflow because of the high rate at which the air in the bin is exhausted.

(3) An extraction from the preamble to the promulgated New Source Performance Standard regulations for coal preparation plants. Federal Register (FR), dated January 15, 1976:

(page 41 FR 2232) - Only sources which break, crush, screen, clean, or dry large amounts of coal were intended to be covered.

(4) Extractions from a document entitled "Background Information for Standards of Performance: Coal Preparation Plants, Volume 1: Proposed Standards", dated October 1976:

(page ix) - Selection of the source category leads to another major decision: determination of the types of sources or facilities to which the standard will apply. A source category often has several facilities that cause air pollution. Emissions from these facilities may be insignificant and, at the same time, very expensive to control. An investigation of economics may show that, within the costs that an owner could reasonably afford, air pollution control is better served by applying standards to the more severe pollution problems. For this reason (or perhaps because there may be no adequately demonstrated system for controlling emissions from certain facilities), standards often do not apply to all sources within a category.

Based on the information contained in these documents, it is clear that truck coal dump operations are not affected facilities under the NSPS Subpart Y regulations. Should fugitive emissions from coal truck dumps be included as part of the source category "coal preparation plants" in determining if the source is a major source under the Part 70 regulations? To answer this question we will look at the definition of a major source in the Part 70 regulations and other documents.

The definition of a major source, under Part 70 regulations includes the following language:

A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits, or has the potential to emit, 100 tpy or more of any air pollutant (including any fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

...

...

(xxvii) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

(5) Extraction from a document entitled "Consideration of Fugitive Emissions in Major Source Determinations", signed by Lydia Wegman (Office of the Air Quality Planning and Standards (OAQPS)) dated March 8, 1994 (Letter attached):

(page 5) - Questions have also been raised regarding the treatment of fugitive emissions where sources in categories listed pursuant to section 302(j) are collocated with sources that are not in any of the listed categories. The EPA intends to follow the policies established in implementation of the PSD and NSR programs. Only the fugitive emissions from the listed source are required to be counted for purposes of determining major source status. Where there is a collocated source that is not on the source category list and where the nonlisted source is the primary activity at the site, fugitive emissions would not need to be counted from the collocated, nonlisted source. The EPA will issue case examples to help clarify application of this principle in the near future.

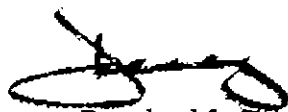
(6) Extraction from a letter from Edward J. Lillis (OAQPS-Permit Programs Branch), dated October 14, 1994 (Letter attached):

(page 2) - It is important to note that it is the NSPS source "category" which defines the reach of the 302(j) rule, not whether an individual source, having constructed or modified, must comply with the NSPS standard itself. In other words, grain elevators of the size and type covered by 40 CFR Subpart DD must include their fugitive emissions to determine if they are a major source under title V even if the NSPS in 40 CFR Subpart DD does not apply to that source.

It is clear from the background documents for development of NSPS that truck dump operations were considered to be part of the coal preparation plant but that the Agency decided not to adopt a specific performance standard for that operation, along with others at the time the standards were developed. This fact along with the discussion in the attached memo from Lydia Wegman of Office of Air Quality Planning and Standards (OAQPS) dated March 8, 1994, makes it clear that only the fugitive emissions from the listed source category, when collocated with a nonlisted source category that is the primary activity, are required to be counted for purposes of determining major source status. The October 14, 1994 letter from Edward Lillis clearly makes the point that the NSPS source category, covered by the NSPS, does not need to be regulated by the NSPS to be required to include the quantifiable fugitive emissions from that source category. Coal dump operations are considered to be part of the source category "coal preparation plants", if they are located at the site of the coal preparation plant. No specific guidance exists about limiting or restricting the type or number of fugitive emission operations, within a NSPS source category, and since it makes sense to include fugitive emissions in the same manner as is done for all the other listed source categories, for which fugitive emissions are to be counted in determining if the source is major, all quantifiable fugitives located at the listed source category must be included. Since the Part 70 regulations require the inclusion of fugitive emissions of a stationary source category, which is being regulated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category, all fugitive particulate emissions occurring at the coal preparation plant must be included along with all point source emissions to determine if the source is major. The inclusion of fugitive particulate emissions would not be only from coal dump operations but from all quantifiable fugitive particulate emission operations located at the source category (coal preparation plant).

This determination was discussed with the appropriate individuals at EPA headquarters, to assure national consistency. I hope that this determination provides the guidance that you need regarding this issue. If you have additional questions about our determination, please call me at (303) 293-1750 or have your staff call John T. Dale at (303) 294-7611.

Sincerely,



Douglas M. Skie, Chief  
Air Programs Branch

Attachments (3)

March 8, 1994

MEMORANDUM

**SUBJECT:** Consideration of Fugitive Emissions  
in Major Source Determinations

**FROM:** Lydia Wegman, Deputy Director /s/  
Office of Air Quality Planning and Standards (MD-10)

**TO:** Director, Air, Pesticides and Toxics  
Management Division, Regions I and IV  
Director, Air and Waste Management Division,  
Region II  
Director, Air, Radiation and Toxics Division,  
Region III  
Director, Air and Radiation Division,  
Region V  
Director, Air, Pesticides and Toxics Division,  
Region VI  
Director, Air and Toxics Division,  
Regions VII, VIII, IX, and X

This memorandum summarizes the Environmental Protection Agency's (EPA's) policy regarding the consideration of fugitive emissions for the purpose of determining whether a source is major under the Clean Air Act (Act). As explained below, EPA will revisit, in a future revision to the part 70 regulations ("Operating Permit Programs"), the requirement to consider fugitives from sources subject to national emission standard for hazardous air pollutants (NESHAP) and new source performance standards (NSPS) promulgated after August 7, 1980, when determining whether a source is major under section 302(j) of the Act. For the present time, State operating permits programs that do not require consideration of fugitives for these sources will be eligible for interim approval. States must require consideration of fugitives for purposes of determining whether a source is major under section 112, but need not require consideration of fugitives for purposes of the new major source definitions in part D of title I of the Act.

I. Background: Statutory and Regulatory Provisions Affected

A. Section 302(j) and Section 169(1)

The Act's primary definition of "major stationary source" and "major emitting facility" is found in section 302(j) in the general definitions portion of the Act. It reads:

Except as otherwise provided, the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the

potential to emit, 100 tons per year (tpy) or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

The section 302(j) definition was added to the Act in 1977. Another definition of "major emitting facility" was added in 1977 in section 169(1). It sets a higher 250 tpy threshold for certain source categories for purposes of part C preconstruction review.

**B. Lower Threshold Definitions Added by the 1990 Amendments to the Act**

The 1990 Amendments added nine new definitions of "major source" or "major stationary source." Seven of these definitions appear in part D of title I and expand the set of "major stationary sources" of volatile organic compounds, particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10), and CO for nonattainment areas by lowering the tonnage threshold below the 100 tpy specified in section 302(j).<sup>1</sup>

The other two new definitions are found in section 112(a)(1) and title V.<sup>2</sup> Section 112 provides a definition of "major source" similar to the definition of "major stationary source" and "major emitting facility" in part D of title I only tailored to the new hazardous air pollutants (HAP) provisions. The title V definition incorporates by reference all of the other "major source" and "major stationary source" definitions.

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<sup>1</sup>These are, specifically: §182(c), "Serious Areas" for ozone nonattainment; §182(d), "Severe Areas" for ozone nonattainment; §182(e), "Extreme Areas" for ozone nonattainment; §182(b)(1)(A)(ii)(I), new source review in "moderate areas" for ozone nonattainment; §187(c), "Serious Areas" for carbon monoxide nonattainment; §184(b)(2), interstate ozone control; §189(b)(3), "Serious Areas" for PM-10 nonattainment.

<sup>2</sup>Section 501(a)(1) provides: The term "major source" means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following: (a) a major source as defined in section 112, and (b) a major stationary source as defined in section 302 or part D of title I.

### C. "Major Source" Definitions in Part 70

The definition of "major source" in section 70.2 of the permits rule divides into three parts, corresponding to the section 112 definition, the section 302(j) definition, and the lower tpy thresholds in the title I nonattainment provisions, respectively. The second definition, corresponding to section 302(j), requires the counting of fugitive emissions only for certain listed source categories. The other two part 70 definitions are silent on the issue of when fugitive emissions must be considered.

The section 302(j) definition lists 27 categories of sources for which fugitive emissions must be considered in determining whether a source is major for purposes of section 302(j). The twenty-seventh category requires that fugitive emissions be considered for:

All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category.

For present purposes, this should be contrasted with the corresponding provisions in the prevention of significant deterioration (PSD) and new source review (NSR) regulations (see, e.g., 40 CFR §51.165(a)(1)(iv)(C)), which refer to:

Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

Regarding the first and third parts of the part 70 "major source" definition, the question of when fugitive emissions must be considered for applicability purposes was addressed directly in the response to comments document for the part 70 rulemaking. Section 3.5 of the response document states that the Act requires fugitives to be considered for purposes of determining whether a source is major under any of the part D or the section 112 definitions.

## II. Summary of EPA Policy

In response to questions raised following promulgation of part 70, EPA has reconsidered the treatment of fugitives for purposes of making major source determinations. The EPA's decisions regarding the relevant provisions is summarized below in three parts.

### A. Sources Subject to NSPS or NESHAP Standards Promulgated after August 7, 1980

The designation in the part 70 rules of sources subject to NSPS and NESHAP promulgated after August 7, 1980 as sources for

which fugitives must be counted for purposes of major source determinations did not follow the procedural steps necessary for a proper rulemaking under section 302(j). As a result, EPA believes it would be inappropriate for the Agency to require States to count fugitives from these sources in making section 302(j) major source determinations. In the absence of a legally-sound Federal requirement, a State may choose to exercise its own legal authority to require that fugitives from sources subject to the post-1980 standards be considered in determining major source status under section 302(j). However, a State need not require that fugitives from these sources be so counted in order to obtain interim approval of its title V program.

The EPA intends to revisit this aspect of the rule in a revision to part 70 to occur sometime in 1994. The EPA believes that it may, in the mean time, grant interim approval to programs that do not require fugitives to be considered in determining the status of sources subject to post-1980 NSPS and NESHAP standards. However, until the rule is revised with respect to sources subject to the post-1980 standards, EPA may not grant full approval to a State program that does not include the post-1980 standards. Programs adhering to the language in the current rule will be eligible for full approval provided, as is the case for any element of part 70, the State has provided adequate legal authority for that element of its program.

Note that the policy articulated in section C below regarding the section 112 major source definition operates independently of a State's decision to list the post-1980 NESHAP standards for purposes of determining whether a source is major under the section 302(j) definition. Therefore, in determining whether a source is major for section 112 purposes, a source must consider fugitive emissions of HAP listed pursuant to section 112(b) regardless of whether the source is in a category designated through rulemaking under section 302(j).

B. Definitions of "Major Stationary Source" in Part D of Title I

The EPA has revised its interpretation of the Act from that stated in the response to comments document. The EPA now believes the Act does not require fugitives to be considered for purposes of determining major source status in these nonattainment areas, except as provided pursuant to rulemaking under section 302(j). State programs that follow this revised interpretation will be eligible for full approval, as will programs that follow the more inclusive policy articulated in the response to comments document, provided the more inclusive program is supported by adequate State law authority.

The legal rationale for this position is that nothing in the statute or the legislative history of the Part D definitions indicates an intent to depart from the section 302(j) requirement that rulemaking be done before fugitives are included for

applicability purposes in nonattainment areas. To the contrary, the explicit reference in most of these Part D definitions back to section 302(j), and the fact that these provisions address a broad universe of sources emitting a particular pollutant or class of pollutants, suggests that the section 302(j) rulemaking requirement carries over to these definitions. It is therefore permissible to read the Act not to require the consideration of fugitive emissions for these purposes.

#### C. Definition of "Major Source" in Section 111

The EPA continues to believe the Act requires that fugitive emissions, to the extent quantifiable, must be considered in determining major source status for all section 112 purposes. This policy applies to a source of any of the section 112(b) listed pollutants whether or not the source in question is in a category listed pursuant to section 112(c). The EPA expects States to comply with this policy in their operating permits program submittals.

The section 112 "major source" definition is distinguishable legally from the Part D definitions in some important respects. Section 112 uses the term "major source" as opposed to "major stationary source," and legislative history indicates an intent to treat this definition as distinct from the section 302(j) "major stationary source" definition. Moreover, section 112 establishes a new regulatory program wherein Congress has narrowed the regulatory concern to specific pollutants at specific source categories to be determined by EPA. All of this suggests that the section 302(j) rulemaking requirement does not apply in the context of section 112, and that fugitive emissions must therefore be included for purposes of determining whether a source is major under section 112.

#### D. Collocation of Sources

Questions have also been raised regarding the treatment of fugitive emissions where sources in categories listed pursuant to section 302(j) are collocated with sources that are not in any of the listed categories. The EPA intends to follow the policies established in implementation of the PSD and NSR programs. Only the fugitive emissions from the listed source are required to be counted for purposes of determining major source status. Where there is a collocated source that is not on the source category list and where the nonlisted source is the primary activity at the site, fugitive emissions would not need to be counted from the collocated, nonlisted source. The EPA will issue case examples to help clarify application of this principle in the near future.

For further information, please contact Kirt Cox, Operating Permits Policy Section, at (919) 541-5399, or Adan Schwartz, Office of General Counsel, at (202) 260-7632.

6

cc: Air Branch Chief, Regions I-X  
Regional Counsel, Regions I-X  
M. Winer  
M. Miller  
K. Stein

OAQPS:AQMD:PPB:OPPS:X.Cox/C.Bradsher(541-5399/MU)3/7/94.  
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REF: FUGIT.W77



## National Grain and Feed Association

September 20, 1994

Mr. Edward J. Lillis, Chief  
Permits Programs Branch  
U.S. Environmental Protection Agency  
Office of Air Quality Planning and Standards  
Research Triangle Park, NC 27711

Dear Mr. Lillis:

Thanks again for taking the time to explain the Environmental Protection Agency's (EPA) policy on the consideration of fugitive emissions of a stationary source for applicability purposes (Section 302(j) of the Act). Current EPA permitting regulations (40 CFR Part 70 - State Operating Permit Programs) state that "... fugitive emissions of a stationary source shall not be considered in determining whether it is a major source for the purposes of section 302(j) of the Act, unless the source belongs to ... " one of 27 listed source categories, including stationary source categories regulated by section 111 of the Act, i.e., New Source Performance Standards (NSPS).

The agency published NSPS for grain elevators on August 3, 1978. However, these standards only apply to new, modified or reconstructed grain terminal elevators with a permanent storage capacity greater than 2.5 million bushels, and to new, modified, or reconstructed grain storage elevators with a permanent grain storage capacity of more than 1 million bushels at wheat flour mills, wet corn mills, dry corn mills, rice mills, or soybean oil extraction plants. Importantly, Congress specifically exempted grain elevator facilities not exceeding these capacity thresholds from NSPS coverage pursuant to Section 111(i) of the Act.

Based upon our recent conversation, it is our understanding EPA requires that fugitive emissions be counted for applicability purposes only for facilities subject to NSPS for grain elevators. Conversely, EPA policy for those facilities not subject to NSPS for grain elevators is that fugitive emissions "... shall not be considered when determining whether it is a major stationary source for the purposes of section 302(j) of the Act."

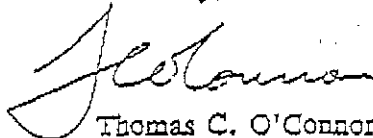
NGFA supports the above position on this matter and believes that it is consistent with the intent of Congress as expressed in the Act. Furthermore, it avoids burdening the Clean Air Act operating permit program with numerous permit applications for facilities which do not pose an adverse environmental impact and avoids burdening those facilities with the cost of obtaining such permits.

September 20, 1994 -

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Given the complexity and importance of this issue, we thought it prudent to ask that you please confirm that our understanding of current EPA policy on the consideration of fugitive emissions for applicability purposes is correct. Thanks again for your help.

Sincerely,



Thomas C. O'Connor  
Director of Technical Services

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
RESEARCH TRIANGLE PARK, NC 27711

October 14, 1994

OFFICE OF  
AIR QUALITY PLANNING  
AND STANDARDS

Mr. Thomas C. O'Connor  
Director of Technical Services  
National Grain and Feed Association  
1201 New York Avenue, N.W.  
Suite 830  
Washington, D.C. 20005

Dear Mr. O'Connor:

This is in response to your September 20, 1994 letter regarding the consideration of fugitive emissions of a stationary source for major source applicability purposes under the Clean Air Act's (Act's) title V operating permits program. Specifically, your request is in reference to the role the August 3, 1978 section 111 new source performance standards (NSPS) for new, modified or reconstructed grain elevators plays in determining which grain elevators must consider fugitive emissions for purposes of determining title V applicability.

In accordance with the Environmental Protection Agency's August 7, 1980 section 302(j) rulemaking, certain specific source categories must include fugitive emissions (to the extent quantifiable) in determining if a source is a major source for title V purposes. These source categories generally parallel those listed by Congress in section 169(1) of the Act, and also include "any other stationary source category which, as of August 7, 1980, is being regulated under sections 111 or 112 of the Act" [see, for example, 52.21(i)(4)(vii)].

Certain size grain elevators (as defined in 40 CFR Part 60 DD) have been subject to regulation under section 111 since August 3, 1978 and are, therefore, a source category for which fugitives must be included when determining major source status. However, as you point out, grain elevators below the applicable NSPS facility size thresholds need not consider fugitive emissions in such determinations.

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As defined in EPA's operating permit regulations, *fugitive emissions* are those emissions which could reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

NOT

2

It is important to note that it is the NSPS source "category" which defines the reach of the 302(j) rule, not whether an individual source, having constructed or modified, must comply with the NSPS standard itself. In other words, grain elevators of the size and type covered by 40 CFR Subpart DD must include their fugitive emissions to determine if they are a major source under title V even if the NSPS in 40 CFR Subpart DD does not apply to that source.

If you have any questions, please call Mr. David Solomon, Chief, New Source Review Section, at (919) 541-5375.

Sincerely,



Edward G. Lillis  
Chief

Permits Programs Branch

cc: D. Solomon

## 45CSR30A

### DEFERRAL OF AREA SOURCES FROM PERMITTING REQUIREMENTS

#### RESPONSE TO COMMENTS

At the public hearing on proposed interpretive rule 45CSR30A conducted on July 19, 1995, no oral comments were presented on the rule. However, written comments were presented by the following organizations: United States Environmental Protection Agency ("USEPA"); the West Virginia Manufacturers Association; Appalachian Power Company; the West Virginia Mining and Reclamation Association; and the West Virginia Coal Association. The Division of Environmental Protection Office of Air Quality ("OAQ") has summarized these comments and provides the following response. Regarding USEPA's comments, OAQ notes for the record that USEPA's comments were received July 21, 1995, two days after the close of the public comment period. However, since EPA is required by federal law to administer the Clean Air Act, including the Title V operating permits program, and since EPA may delegate the Title V program to the State for implementation, OAQ believes it is appropriate to consider EPA's comments at this time. OAQ further notes that EPA's response was received within thirty (30) days of its receipt of the public notice of the proposed rule.

#### I. Commenter: The United States Environmental Protection Agency

##### COMMENT 1: Section 4.3

*This section appears to limit deferred sources from the ability to "opt-in" to the 45CSR30 program after the dates in Section 45CSR30.4.1.a. have passed. Part 70 does not limit the time by which deferred sources may "opt-in."*

RESPONSE 1: The proposed rule does limit deferred sources from the ability to "opt-in" to the 45CSR30 program after the dates in Section 45CSR30.4.1.a. have passed. In order to efficiently manage and allocate its resources, the OAQ needs to know how many sources will require Title V permits and during what time periods. Therefore, OAQ is requiring the sources to make a decision to meet the original schedule or, if eligible, be deferred for a minimum of three (3) years. The language in Section 4.3 of the proposed rule will therefore be retained.

##### COMMENT 2: Section 5.1.

*Regarding Section 5.1., certain sources currently deferred from the obligation to obtain a permit may be ultimately exempted from permitting.*

RESPONSE 2: OAQ agrees with the comment and understands that certain sources currently deferred from the obligation to obtain a permit may ultimately be exempted from permitting. The

language in the proposed rule has been revised to include a new section, 3.3., stating that any such sources exempted by EPA will not be required to obtain a WV 45CSR30 permit from the OAQ.

## **II. Commenter: West Virginia Manufacturers Association**

### **COMMENT 1: General**

*The West Virginia Manufacturers Association supports the proposed rule and believes it is entirely appropriate to focus first on the State's major sources, and leave the minor ones to the current permit and control programs.*

RESPONSE 1: The comment supports the proposed rule.

### **COMMENT 2: Deferral Period**

*Due to the heavy administrative burden on the OAQ which we believe will result from 45CSR30, we believe that a full five-year deferral period is justified rather than three, with possible extensions.*

RESPONSE 2: The proposed three-year deferral with a possible two-year extension will provide OAQ the flexibility needed to efficiently manage its permitting workload. All of the first round of permits (non-deferred) are required to be issued within three years of the effective date of the program. Reissuance of these permits will begin during the sixth year after the effective date of the program. OAQ's intention is to permit the deferred sources during this interim period between the end of the third year and before the sixth year. Also see Response I.1. above.

### **COMMENT 3: Section 4.3**

*For those minor sources that "opt-in" for a Regulation 30 permit, we suggest that Section 4.3 be revised to allow such a permit application to be filed at any time during the deferral period, not on the schedule in Regulation 30 for major sources. There is no reason to artificially regiment "opting-in" to only set times or to only within the first effective year of Regulation 30.*

RESPONSE 3: See Response I.1. above.

## **III. Commenter: Appalachian Power Company**

### **COMMENT 1: General**

*Appalachian Power Company supports the proposed rule. Deferring area sources will allow the OAQ and industry to concentrate their resources on Title V major source permits and make that aspect of the permitting program the best it can be.*

RESPONSE 1: The statement supports the proposed rule.

**IV. Commenter: West Virginia Mining and Reclamation Association and the West Virginia Coal Association**

COMMENT 1: General

*The Associations support the deferral of minor sources as proposed and believe even a longer deferral period is appropriate.*

RESPONSE 1: The statement generally supports the proposed rule. Also see Response II.2. above.



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

GASTON CAPERTON  
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.  
COMMISSIONER

July 21, 1995

Ms. Judy Cooper  
Director, Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
Charleston, West Virginia 25305

RE: 45CSR30A - "Deferral of Area Sources From Permitting  
Requirements"

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned agency-approved rule with the Secretary of State's Office and Legislative Rule-Making.

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,

A handwritten signature in cursive script that reads "Laidley Eli McCoy".

Laidley Eli McCoy, Ph.D.  
Commissioner

LEM;RTH:cc

Attachment