

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #5

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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

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

CITE AUTHORITY: W.Va. Code §§22-5-4.12; W.Va. Code §29A-1-2(c); WV45CSR30

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 30A

TITLE OF RULE BEING AMENDED: "Deferral of Nonmajor and Area Sources
from Permitting Requirements"

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS February 18, 2000

Edward L. Kropp, Chief
Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

Garrie J. Chambers

45CSR30A

DEFERRAL OF NONMAJOR AND AREA SOURCES FROM PERMITTING REQUIREMENTS

RESPONSE TO COMMENTS

On October 6, 1999, the Division of Environmental Protection (DEP), Office of Air Quality (OAQ) began a thirty (30) day period of accepting written comments on proposed changes to Interpretive Rule 45CSR30A – “Deferral of Nonmajor and Area Sources from Permitting Requirements.” The OAQ received one written comment from the United States Environmental Protection Agency (U.S. EPA), Region III. The agency’s response follows.

I. Commenter: United States Environmental Protection Agency (US EPA)

COMMENT A. *The commenter stated that the definition of “area source” does not mirror the definition found in 40CFR63 and further questioned why it is necessary to distinguish the term “area source” from the term “nonmajor source.”*

RESPONSE A. While OAQ understands the commenter’s concern, the reason for making a distinction between the terms “area source” and “nonmajor source” relates to EPA’s approach to the deferral issue for sources subject to 40CFR Parts 60 and 63.

COMMENT B. *The commenter suggested a clarification in the language in subsection 3.2 of the rule in order to make the language consistent with 40CFR Part 70 and 45CSR30.*

RESPONSE B. OAQ agrees with the commenter and has revised the language accordingly.

COMMENT C. *The commenter suggested that the language in subsection 3.3 be clarified by adding the language “by US EPA” to make it clear that it is EPA which will exempt any such sources from the permitting requirement.*

RESPONSE C. OAQ agrees and has revised the language accordingly

COMMENT D. *The commenter is concerned that the language in subsections 4.1 and 4.2 giving the Director discretion to extend the deferral period could be problematic insofar as the language might allow an approach inconsistent with the federal program.*

RESPONSE D. OAQ had included the subject language in the original rule in order to have necessary flexibility with respect to the deferral issue. However, with the passage of time, such flexibility is no longer necessary, and OAQ has removed the subject language from the rule.

COMMENT E. *The commenter pointed out that the third sentence in subsection 4.2 relating to when an application must be submitted might conflict with the previous two sentences in that subsection.*

RESPONSE E. OAQ agrees and has deleted the subject sentence.

COMMENT F. *The commenter questioned the meaning of the second sentence in subsection 4.3.*

RESPONSE F. At the time this rule was first adopted, OAQ believed it was important to control the flow of applications submitted by sources wishing to “opt in” to the program; however, with the passage of time this is no longer necessary, and the subject sentence has been deleted.



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526



West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

January 18, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

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

Dear Ms. Cooper:

This letter will serve as my approval to the file the above-referenced rule as "Notice of Agency Adoption of an Interpretive Rule" with your office.

Your cooperation in this regard is very much appreciated. If you should have questions or require additional information, please contact Carrie Chambers in my office at 759-0515.

Sincerely yours,

Michael C. Castle
Commissioner

MCC:cc

Attachment

cc: Karen Watson
Carrie Chambers

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 45CSR30A - "Deferral of Nonmajor and Area Sources from Permitting Requirements"

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

B. SUMMARY OF RULE:

Revisions will permit the Director to defer area and nonmajor sources from the obligation to obtain a Title V permit consistent with EPA rulemaking.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Proposed revisions are necessary to permit the Director to defer area and nonmajor sources from the obligation to obtain a Title V permit for periods beyond the five-year limit now contained in 45CSR30A.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR30A - "Deferral of Nonmajor and Area Sources from Permitting Requirements"

Type of Rule: _____ Legislative 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	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-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	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

No fiscal impact on state government is expected, since the effect of the revisions is to defer permit obligations and associated agency review until some time in the future.

3. Objectives of these rules:

Revisions will permit the Director to defer area and nonmajor sources from the obligation to obtain a Title V permit consistent with EPA rulemaking.

Appendix B
Fiscal Note For Proposed Rules
Page Two

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See paragraph #2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

There may be a beneficial economic impact on regulated sources insofar as the rule will allow the State to further defer the requirement to obtain a Title V permit for area and nonmajor sources.

C. Economic Impact on Citizens/Public at Large.

None.

Date:

January 18, 2000

Signature of Agency Head or Authorized Representative

Carrie J. Chambe

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

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SERIES 30A
DEFERRAL OF NONMAJOR AND AREA SOURCES FROM PERMITTING
REQUIREMENTS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§45-30A-1. General.

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

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

1.3. Filing Date. -- January 18, 2000

1.4. Effective Date -- February 18, 2000

§45-30A-2. Definitions.

2.1. The definitions set forth in WVCSR §45-30-2 shall apply to this rule as though set forth herein with the exception of the following definition:

2.1.a. "Area source" means any nonmajor source subject to a standard, limitation or other requirement under 40 CFR Part 63.

§45-30A-3. Deferral of Nonmajor and Area Sources.

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

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

3.1.b. 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, the Director may not defer an area source from the obligation to obtain a permit if the source is subject to a standard, limitation or other requirement promulgated after July 21, 1992, and the standard or requirement does not authorize the deferral of the source from the obligation to obtain a permit under Title V of the Clean Air Act.

3.3. Notwithstanding the provisions of subsection 3.1, the Director may not defer a source subject to a standard, limitation or other requirement under 40 CFR Part 60 (§111 of the Clean Air Act) from the obligation to obtain a permit in a manner inconsistent with any specific date or schedule established by such standard or requirement relating to the obligation to obtain a permit

under Title V of the Clean Air Act.

3.4. Any sources deferred by the U.S. EPA from the obligation to obtain a Title V permit which are subsequently exempted by U.S. EPA from the requirement to obtain a permit shall not be required to obtain a permit under WV 45CSR30.

§45-30A-4. Deferral Period.

4.1. The deferral of sources pursuant to this rule shall remain in effect until the date specified in any rulemaking promulgated by U.S. EPA relating to nonmajor or area sources and the obligation to obtain a permit under Title V of the Clean Air Act or until the date specified in any individual standard or requirement relating to a source's obligation to obtain a Title V permit.

4.2. Upon expiration of the deferral period, sources deferred under this rule shall apply for permits in accordance with the requirements of WV 45CSR30 and the requirements of any rule promulgated by U.S. EPA relating to such nonmajor and area sources. Due dates for WV 45CSR30 permit applications from deferred sources shall be calculated in accordance with the application schedule under WVCSR §45-30-4.1.a or any schedule promulgated by U.S. EPA, whichever is more stringent.

4.3. Notwithstanding the provisions of subsection 3.1, sources that are deferred by operation of this rule may elect to apply for a permit under WV 45CSR30.

§45-30A-5. Effect of Deferral.

5.1. Sources that are deferred by operation of this rule shall not be relieved from the requirements of any applicable statutes, rules, or permits, other than the requirement to obtain a permit under WV 45CSR30; provided, however, that such sources shall not be relieved from the obligation to pay any and all permit fees required under WV 45CSR30.



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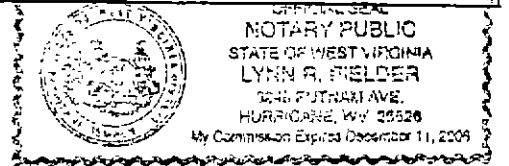
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State of West Virginia, AFFIDAVIT OF PUBLICATION

I, Sandra Sigg 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 annexed notice of:



COMMENT PERIOD
 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 9TH day of OCTOBER 1999. Published during the following dates: 10/08/99-10/08/99
 Subscribed and sworn to before me this 12 day of October
 Printers fee \$ 51.04

Lynn R. Fielder
 Notary Public of Kanawha County, West Virginia

NOTICE OF PUBLIC COMMENT PERIOD

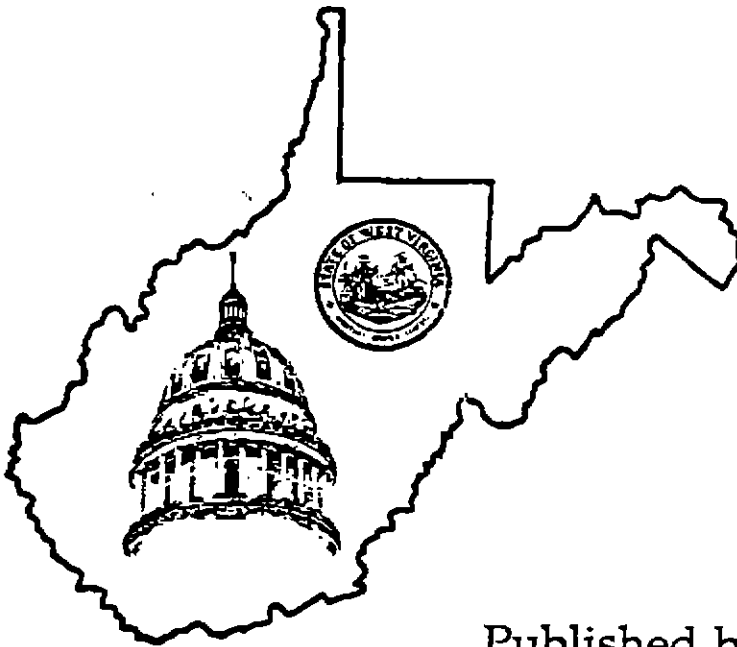
The West Virginia Division of Environmental Protection, Office of Air Quality hereby establishes a public comment period to allow interested persons to comment on revisions to an interpretive rule, 45CSR30A, "Deferral of Nonmajor and Area Sources from Permitting Requirements". Proposed revisions to the rule are intended to allow the Director to defer area and nonmajor sources from the obligation to obtain a Title V permit consistent with EPA rulemaking.

The Office of Air Quality will accept written comments on 45CSR30A until November 8, 1999 at 5:00 p.m. Comments must be hand delivered, faxed (558-3287) or postmarked by November 8, 1999 in order to be considered by the Agency and made a part of the rulemaking record. Comments will not be accepted by e-mail. Written comments must be sent to the following address:

Edward L. Kropp, Chief
 Office of Air Quality
 1558 Washington St., E.
 Charleston, WV 25311-2599

A copy of 45CSR30A will be available for public review on or before October 8, 1999 in the Office of Air Quality's Charleston Office at the above address.
 (441551)

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Published by Ken Hechler, Secretary of State

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INTERPRETIVE

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: Interpretive; CITE AUTHORITY W. Va. Code §§22-5-4, 12, W. Va. Code §29A-1-2(c)
and WV 45CSR30

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 30A

TITLE OF RULE BEING AMENDED: "Deferral of Nonmajor Area Sources from Permitting Requirements"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON November 8, 1999 AT 5:00 PM

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS

Edward L. Kropp, Chief
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25111-2599

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE

B. M. I. M. S.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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Edward L. Kropp, Chief
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311-2599

NOV 23 1999

Dear Mr. Kropp. *skpp*

Enclosed please find a hard copy version of comments prepared by the Environmental Protection Agency (EPA) on West Virginia's Proposed Interpretive Rule - 45CSR30A, "Deferral of Nonmajor and Area Sources from Permitting Requirements". EPA previously transmitted these comments via fax on November 8, 1999. If you have any questions, please feel free to contact me or Jennifer M. Abramson of my staff at (215) 814-2066.

Sincerely,

Judith M. Katz, Director
Air Protection Division

Enclosure

cc: Terry Polen, WVOAQ
Rick Atkinson, WVOAQ

November 8, 1999

EPA Comments on Proposed Interpretative Rule - 45CSR30A

Defining and Distinguishing Area Sources (45-30A-2)

The section 2.1.a. definition of "Area source" does not mirror the definition found in 40CFR63, section 63.2. This discrepancy may cause confusion in implementing Part 63 standards through 45CSR30. More importantly, it is not clear why it is necessary to distinguish the term "Area source" from the term "nonmajor source" to begin with. The provisions of 40CFR70, section 70.3 seem to treat an "Area source" as defined in 45CSR30A the same as a nonmajor source: (1) Section 70.3(b)(1) defers nonmajors subject to standards or other requirements under §111 or §112 of the Clean Air Act which were promulgated before June 21, 1992; (2) Section 70.3(b)(2) allows standards or other requirements under §111 or §112 of the Clean Air Act promulgated after July 21, 1999 to determine deferral status of nonmajors. In approving West Virginia's program, EPA determined that 45CSR30, section 3.2.a. addressed both these requirements. [Note that this provision employs the term "nonmajor" source versus "Area" source.]

Because the term "nonmajor source" appears to capture the "Area source" concept as defined in 45CSR30A, and is more consistent with Part 70/45CSR30 regulatory language, it seems that there is no need to define/distinguish "Area sources" in this interpretative rule.

Deferring Nonmajor Sources (45-30A-3)

In accordance with the discussion above, it is not clear why Section 3.2 is limited to deferrals of an "Area source" only. If EPA promulgates a 40 CFR 60 standard after July 21, 1992 for which nonmajors are subject, the Director may not defer in a manner inconsistent with 40CFR70, section 70.4(b)(2) [45CSR30, section 3.2.a].

Also, it is not clear what is intended by using the language in section 3.2 "...if the source is included in a source category for which U.S.EPA has promulgated rules..." as opposed to the language employed in section 2.1.a. "...source subject to a standard or other requirement". For clarity and consistency with Part 70/45CSR30, it probably would be best to refer to such a source as a "source subject to a standard or other requirement under §111 or §112 of the Clean Air Act" promulgated after July 21, 1992...

For clarity, EPA suggests that the following language be added in section 3.3 "Any sources deferred by the U.S. EPA from the obligation to obtain a permit which are subsequently exempted by U.S.EPA from the requirement...".

Deferral Period (45-30A-4)

To the extent that the section 4.1. language “Unless the Director specifies otherwise” can be interpreted to allow the Director to extend the deferral period beyond the time allowed by Federal rules, this language is problematic. Also, it is recommended that the references to “area sources” be removed (see discussion above).

To the extent that the section 4.2. language “Unless the Director specifies otherwise” in the second sentence can be interpreted to allow the Director to extend the deferral period beyond the time allowed by Federal rules, this language is problematic. Also, it is recommended that the references to “area sources” be removed (see discussion above). Depending on how future deferrals are addressed by EPA, the third sentence in 4.2. may conflict with the first two sentences. Because of this uncertainty, it may make more sense to rely on the first two sentences only, and not provide for the starting of a “clock” which may make permit application due dates either more or less stringent than Federal requirements.

The second sentence in section 4.3 does not make sense. If a source is opting-in to 45CSR30, why subject such source to a timely permit application due date requirement ?

Prepared by:

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(215) 814-2066

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U.S.EPA, Region III
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