

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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SEP 5 4 11 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: 45CSR30B

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: 45CSR30B

TITLE OF RULE BEING ADOPTED: IDENTIFICATION AND COUNTING OF FUGITIVE
EMISSIONS IN MAJOR SOURCE DETERMINATIONS UNDER WV 45CSR30

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

45CSR30B

IDENTIFICATION AND COUNTING OF FUGITIVE EMISSIONS IN DETERMINATIONS UNDER WV 45CSR30

SUMMARY

The purpose of 45CSR30B, a proposed new interpretive rule, is to provide guidance and information to the public regarding how and when to include fugitive emissions to determine whether a source is a major source subject to the requirements of WV 45CSR30. This rule is consistent with the United States Environmental Protection Agency's interpretation of the Title V program under the Clean Air Act Amendments of 1990.

This rule will permit the agency to direct its efforts and resources towards 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.

45CSR30B

IDENTIFICATION AND COUNTING OF FUGITIVE EMISSIONS IN DETERMINATIONS UNDER WV 45CSR30

STATEMENT OF CIRCUMSTANCES

The agency is proposing 45CSR30B 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, 45CSR30B is the mechanism the Chief is proposing to use to explain how and when to include fugitive emissions to determine whether a source is a major source subject to the requirements of WV 45CSR30.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR30B - Identification and Counting of Fugitive Emissions in Major Source Determinations Under WV 45CSR30

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	\$	\$	\$	\$	\$
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:

- This rule should not substantially affect currently projected and funded manpower requirements.
- Total fees collected will remain unchanged since any sources which became non-Title V will still pay Reg. 22 fees.

3. Objectives of these rules:

- Follow federal guidance and make regionally consistent policy on when/when not to count fugitive emissions in determining permit applicability requirements.

Appendix B
Fiscal Note For Proposed Rules
Page Two

- Provide detailed information and guidance to enable sources to determine their status under WV 45CSR30.
4. Explanation of overall economic impact of proposed rule.
- A. Economic impact on state government.

The effect of the rule may be to reduce the number of facilities requiring early Title V permits and may reduce the pressure for higher fees and more manpower to implement the Title V program.

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

Some small sources may be removed from the operating permit program requirements under WV 45CSR30 as a result of this rule.

- 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

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SEP 5 4 11 PM '95

45CSR30B
Title 45
INTERPRETIVE RULE
BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 30B
IDENTIFICATION AND COUNTING OF FUGITIVE EMISSIONS IN
MAJOR SOURCE DETERMINATIONS UNDER WV 45CSR30

§45-30B-1. General.

1.1. Scope. -- Series 30B provides guidance with respect to which stationary sources are required to count fugitive emissions, and the proper method of identifying such emissions, in making major source determinations for the purpose of determining applicability of the permitting program 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

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

§45-30B-3. Sources Required To Count Fugitive Emissions In Making Major Source Determinations.

3.1. Any source which belongs to a source category regulated by a standard promulgated under §111 or §112 of the Clean Air Act on or before August 7, 1980, including, but not limited to, those source categories listed in subparagraphs A through Z of WV CSR §45-30-2.26.b., shall include fugitive emissions from all quantifiable fugitive emission operations located at the source category, including, but not limited to, all "affected facilities" at the source, in order to determine whether the source is a major source subject to the requirements of WV 45CSR30.

3.2. The provisions of subparagraph 3.1 apply to a source whether or not the source commenced construction or modification before the applicable date in the regulation promulgated under §111 or §112 of the Clean Air Act.

3.3. In addition to those facilities covered under subparagraphs 3.1 and 3.2, all coal preparation plants as defined under 40 C.F.R. §60.251(a) which process more than 200 tons per day

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.

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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JUN 14 3 53 PM '95

OFFICE OF WEST VIRGINIA
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 §§22-5-1 et seq.
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 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

RECEIVED

CONFERENCE ROOM

(JUN 14 1995)

1558 WASHINGTON STREET, EAST

**Legislative Rule Making
Review Committee**

CHARLESTON, WV 25311


COMMENTS LIMITED TO: ORAL WRITTEN BOTH X

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


G. DALE FARLEY
CHIEF

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: INTERPRETIVE ; CITE AUTHORITY WV CODE §§22-5-1 et seq.

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 PROPOSED: 45CSR30B

TITLE OF RULE BEING PROPOSED: "IDENTIFICATION AND COUNTING OF
FUGITIVE EMISSIONS IN MAJOR SOURCE DETERMINATIONS UNDER WV 45CSR30"

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 JULY 19, 1995 AT 5:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

G. DALE FARLEY, CHIEF
OFFICE OF AIR QUALITY
1558 WASHINGTON STREET, EAST
CHARLESTON, WV 25311

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



G. DALE FARLEY, CHIEF

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

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.

45CSR30B

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I N D E X

1

2

Speaker

Page

3

Introduction by the Moderator..... 3

4

Reporter's Certificate, 5

1 MS. CHANDLER: 45CSR30B, Identification and
2 counting of fugitive emissions in determinations under West
3 Virginia 45CSR30.

4 The purpose of 45CSR30B, a proposed new
5 interpretive rule, is to provide guidance and information
6 to the public regarding how and when to include fugitive
7 emissions to determine whether a source is a major source
8 subject to the requirements of 45CSR30. This rule is
9 consistent with the United States EPA's interpretation of
10 the Title V program under the Clean Air Act Amendments of
11 1990.

12 This rule will permit the agency to direct
13 its efforts and resources towards the larger sources of air
14 pollutants during the initial stages of the State's
15 implementation of the Title V operating permits program,
16 while ensuring that the smaller sources of air pollutants
17 are monitored and controlled under other currently existing
18 State regulatory programs.

19 The floor is now open for any comments on
20 45CSR30B.

21 (No response.)

22 MS. CHANDLER: Hearing no comments, the
23 hearing is now closed on 45CSR30B and the hearing is now

1 closed in its entirety.

2 (WHEREUPON, this hearing and

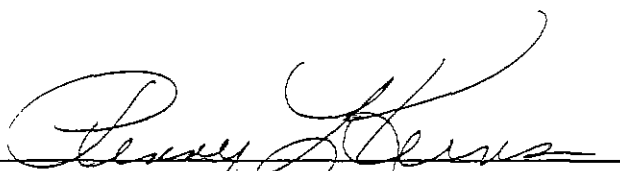
3 the meeting was adjourned.)

REPORTER'S CERTIFICATE

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

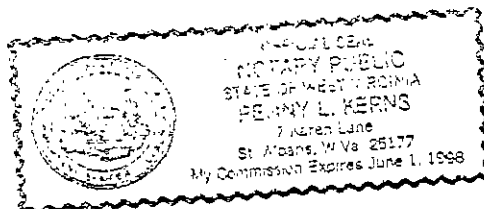
I, Penny L. Kerns, Certified Court Reporter,
do hereby certify that the foregoing is a correct verbatim
record of the proceedings had and testimony taken at the
time and place set forth herein.

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



Penny L. Kerns, CCR
Notary Public

My commission expires June 1, 1998.



PUBLIC HEARING

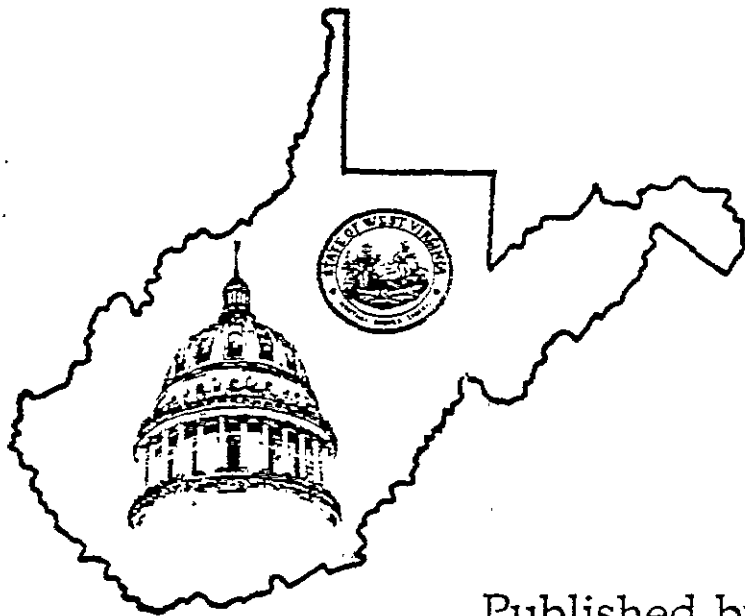
JULY 19, 1995

NAME	COMPANY AFFILIATION	ADDRESS
Kim Brown Poland	Robinson + McElwee	Charleston
Catherine Peck	Robinson + McElwee	Charleston
SARE BRADLEY	Rhône Poulenc	Institute
KARYN SCHMIDT	ROBINSON + McELWEE	Charleston
Jack Pascoli	WV DOT	Charleston
CLAUDIA BANNER	AEP - APPALACHIAN POWER	ROANOKE, VA
PERRY KELLER	WVAOT	CHARLESTON
Robert Foster	WV Mfrs Assoc.	Charleston
BOB PARSONS	JACKSON & KEAY	ETW,
Wendy Raschiff	WV DEP	NITRD
John Brainerd	WV DEP - O&G	Charleston
Fred Durham	WVAEP - O&G	Charleston

SPEAKER'S LIST FOR PUBLIC HEARING

JULY 19, 1995

NAME	COMPANY AFFILIATION	ADDRESS
Leon Shaw	Small Business Underman WV-DEP	WV-DEP 1558 Washington St. E
Bob Foster	WV Mfg Assoc	Ches
Wendy Raschke	Office Env. Advocate	N/A
Karen Schmidt	Robinson + McElwee	Charleston



WEST VIRGINIA REGISTER

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CONTENTS

Volume XII

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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
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(304)558-6000

I. Chronological Index

II. Open Government Meetings Listing

III. Price List

IV. Rule Monitor

V. Notices

a. Legislative Rules

b. Interpretive Rules

c. Procedural Rules

d. Emergency Rules

e. Legislative Rule-Making Review Committee

VI. Legislative Interims

VII. Orders

LX. Ethics Commission Opinions

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 (SO₂) for the Kammer Plant. This proposed SIP revision shows the approvable emission limit for the Kammer Plant is 6.5 lbs/mmHtu 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 Deff Nobonia 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

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NOTICE OF PUBLIC HEARING

JUN 14 3 51 PM '95

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)
- 45CSR40B "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 rule 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.



WEST VIRGINIA REGISTER

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Volume XII

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A Weekly Publication

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*Secretary of State
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190 Kanawha Blvd. E.
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CONTENTS

- I. Chronological Index*
- II. Open Government Meetings Listing*
- III. Price List*
- IV. Rule Monitor*
- V. Notices*
 - a. Legislative Rules*
 - b. Interpretive Rules*
 - c. Procedural Rules*
 - d. Emergency Rules*
 - e. Legislative Rule-Making Review Committee*
- VI. Legislative Interims*
- VII. Orders*
- LX. Ethics Commission Opinions*
- X. Attorney General Opinions*
- XI. Other Documents or Information Filed*
- XII. Publication Deadlines and Publication Dates*

INTERPRETIVE

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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 §922-5-1 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 §922-5-1 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)

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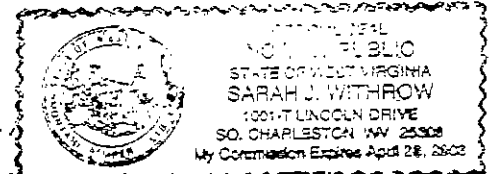
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06/17	LEGF	GZ	PUBLIC HEARING		L249380	1X0950				
			225450001			9.50		4.85	46.07	
06/17	LEGF	DM	PUBLIC HEARING		L249380	1X0950				92.14
			225450001			9.50		4.85	46.07	
TOTAL INVOICE AMOUNT										92.14

State of West Virginia,

AFFIDAVIT OF PUBLICATION

I, Sandra Leys 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



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

Sandra 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, WV. (249380)

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 designation 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 1538 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
 1538 Washington Street East
 Charleston, WV 25311-7599

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

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Scott Depot, WV 25560

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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

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Regional Office Supervisor
Northern Panhandle Regional Office
WV Office of Air Quality
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Wheeling, West Virginia 26003

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Regional Engineer
North Central Regional Office
WV Office of Air Quality
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Fairmont, WV 26554-2800

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Jackson & Kelly
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Vice-President, Energy & Environment
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New Creek, WV 267143

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Appalachian Power Company
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Roanoke, Virginia 24022-2121

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Director, Division of Environmental
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Nitro, WV 25143-2506

Act Foundation
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Charleston, WV 25302

Ms. Pamela Nixon
406 Grandview Point
Dunbar, WV 25064

Mr. Oliver A. Fick
Air Program Manager
Engineering-Science, Inc.
57 Executive Park South, N.E.
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Atlanta, Georgia 30329-2265

Mr. Brian Farkas
Public Information Officer
WV Division of Environmental
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Aristech Chemical Company
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Ms. Liz Schiffer
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Charleston, WV 25311

Nat'l Center for Coal &
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Morgantown, WV 26506-6064

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Citizens Action Group
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Charleston, WV 25301

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Water Quality Advisory
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251 Laurel Street
Morgantown, WV 26505

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

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Suite 1000
Arlington, VA 22209

Coal Association
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Charleston, WV 25301

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Charleston, WV 25311

Mr. Larry George
Barth, Thompson & George
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Brett Robinson
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Lewisberry, PA 17339-9537

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Richmond, Va 23206

Pete Pitsenbarger
WVDEP
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Office of Water Resources
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Charleston, WV 25311

Dale Farley
Office of Air Quality
1558 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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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
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Clarksburg, WV 26302

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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
5422 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

Exponent
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 130
Jaeger, 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 516
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- 8-94 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

WEST VIRGINIA
OFFICE OF AIR QUALITY

1995 JUL 13 P 3:49

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
(Identification and Counting of Fugitive
Emissions)

45 CSR Series 30B,
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 (Three Year Deferral Period) 45 CSR Series 30A, 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, (Identification and Counting of Fugitive Emissions) 45 CSR Series 30B, 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 definition which exempts fugitive emissions from being counted when determining whether a source is a "major source" is certainly in order.

IV. SUMMARY:

We recommend implementation of this draft interpretative rule 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 DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

45 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 30B

July 18, 1995

Dear Mr. Farley:

Appalachian Power Company supports the proposed interpretive Rule 45 CSR 30B - "Identification and Counting of Fugitive Emissions in Major Source Determinations under WV 45 CSR 30" with the following comments.

The purpose of Regulation 30B is, as stated in the summary, "to provide guidance and information...regarding how and when to include fugitive emissions..." This proposed rule does state when to include fugitives but gives no guidance as to how to calculate and include those fugitive emissions. Guidance for calculating these emissions, whether in this regulation or in a policy statement, would be beneficial to facilities.

Thank you for the opportunity to comment on this proposed rule.

Sincerely,

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

Robert J. Robinson
Environmental Affairs Director

RJR:d



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



U.S. DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711
JUL 24 1995

JUN -2 1995

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.¹ 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.

¹ 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>
Coal transport to and from plant	Cover rail cars, trucks or conveyors
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, 1990, 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(i)

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).¹

The other two new definitions are found in section 112(a)(1) and title V.² 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.

¹These 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.

²Section 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 Adam 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:FPB:OPPS:K.Cox/C.Bradsher(541-5399/MU)3/7/94.
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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."

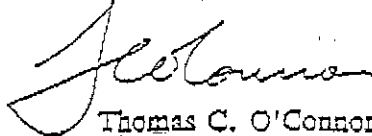
NGFA supports the above position on this matter and believes that it is consistent with the intent of Congress as expressed in the Act. Furthermore, it avoids burdening the Clean Air Act operating permit program with numerous permit applications for facilities which do not pose an adverse environmental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

September 20, 1994

Page 2

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.

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.

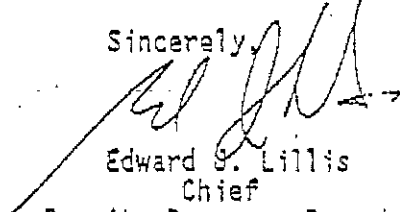
NOT

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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 S. Lillis
Chief

Permits Programs Branch

cc: D. Solomon

45CSR30B

IDENTIFICATION AND COUNTING OF FUGITIVE EMISSIONS IN MAJOR SOURCE DETERMINATIONS UNDER WV 45CSR30

RESPONSE TO COMMENTS

At the public hearing on proposed interpretive rule 45CSR30B 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"); 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 3.1, 3.3 and 3.5.

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.

RESPONSE 1: Upon careful consideration of the materials submitted by EPA, the agency has modified the language in Section 3.1. to provide that fugitive emissions shall be counted from all quantifiable fugitive emission operations located at the source category.

COMMENT 2: Section 4.2

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).

RESPONSE 2: The addition of this section has led to confusion instead of clarity; it will be removed from the rule.

II. Commenter: West Virginia Mining and Reclamation Association and West Virginia Coal Association

COMMENT 1: General

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 rule which exempts fugitive emissions from being counted when determining whether a source is a "major source" is certainly in order.

RESPONSE 1: The statement supports the proposed rule.

III. Commenter: Appalachian Power Company

COMMENT 1: General

Appalachian Power Company supports the proposed rule. The purpose of Regulation 30B is, as stated in the summary, "to provide guidance and information. . . regarding how and when to include fugitive emissions. . ." The proposed rule does state when to include fugitives but gives no guidance as to how to calculate and include those fugitive emissions. Guidance for calculating these emissions, whether in this regulation or in a policy statement, would be beneficial to facilities.

RESPONSE 1: The statement generally supports the proposed rule, but requests further clarification. OAQ notes that calculation guidance was provided with the 1994 Certified Emissions Statement ("CES") package. Also, EPA's AP-42 "Emission Factors" provides information and emission factors related to calculating fugitives.

IV. Miscellaneous

In addition to the above-described changes to the proposed rule, the agency has made one technical correction to the rule in section 3.1. The change has been made to be consistent with language in 40 C.F.R. Part 70, the federal Title V operating permits program.



BUREAU OF ENVIRONMENT
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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: 45CSR30B - "Identification and Counting of Fugitive
Emissions in Major Source Determination
Under 45CSR30"

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, reading "Laidley Eli McCoy".

Laidley Eli McCoy, Ph.D.
Commissioner

LEM;RTH:cc

Attachment