

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Air Pollution Control Commission TITLE NUMBER: 45CSR31

RULE TYPE: Legislative; CITE AUTHORITY WV Code §16-20-5

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: 45CSR31

TITLE OF RULE BEING PROPOSED: Confidential Information

DATE OF PUBLIC HEARING: August 5, 1992 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: Conference Room

WV Air Pollution Control Commission

1558 Washington Street, East

Charleston, WV 25311

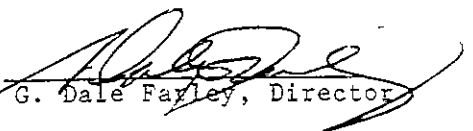
COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH X

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 Fayley, Director

2.90

APPENDIX B

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FISCAL NOTE FOR PROPOSED RULES

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Rule Title: 45CSR31 - "Confidential Information"

Type of Rule: Legislative Interpretive Procedural

Agency: WV Air Pollution Control Comm. Address: 1558 Washington Street, East
Charleston, WV 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

Freedom of information requests regarding file information, confidential and non-confidential, are currently made to this agency. This legislative rule clarifies the definition of confidential information. No additional employees are necessary for the implementation of this rule.

3. Objectives of these rules:

This legislative rule is proposed to clarify the definition of confidential materials in accordance with the mandate of WV Code §16-20-12.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There should be no additional economic impact on state government as no additional employees or facilities are necessary to implement this rule.

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

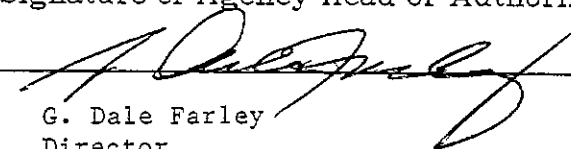
There should be no additional economic impact on specific industries and specific groups of citizens that use confidentiality standards.

C. Economic Impact on Citizens/Public at Large.

No additional impact above current levels.

Date: June 3, 1992

Signature of Agency Head or Authorized Representative



G. Dale Farley
Director



West Virginia Department of
Commerce, Labor & Environmental Resources
Air Pollution Control Commission

1558 Washington Street, East
Charleston, West Virginia 25311

Telephone: (304)348-4022
or (304)348-3286
Fax: (304)348-3287

SUMMARY

45CSR31 - "Confidential Information" - is a new legislative rule proposed by the Air Pollution Control Commission in response to the newly enacted provisions of WV Code §16-20-12 (Effective March 7, 1992). The aforementioned Code provision provides, "The commission shall promulgate legislative rules regarding the protection of records, reports, data or information, or trade secrets, as required by this section". The proposed legislative rule defines and clarifies the definition of confidential information and provides methodology to handle written requests for the inspection of information marked confidential.

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45CSR31

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TITLE 45
LEGISLATIVE RULES
AIR POLLUTION CONTROL COMMISSION

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SERIES 31
CONFIDENTIAL INFORMATION

§45-31-1. General.

1.1. Scope. -- In accordance with the provisions of section twelve, article twenty, chapter sixteen of the West Virginia Code, as amended, this legislative rule is promulgated to define confidential material as related to records, reports, data or information, or trade secrets submitted to the Commission.

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

1.3. Filing Date. --

1.4. Effective Date. --

§45-31-2. Definitions.

2.1. "Applicable Requirements" means all state, interstate, and federal standards and limitations for a source regulated pursuant to a legislative rule, including, but not limited to, emissions limitations, ambient air quality standards, standards of performance, control technique guidelines, preconstruction review, and any standard, term, condition, limitation or requirement contained in any order issued by the director or the commission including consent orders and permits.

2.2. "Classified Information" means classified information pertaining to national security.

2.3. "Commission" means the West Virginia Air Pollution Control Commission created pursuant to the provisions of article twenty, chapter sixteen of the West Virginia Code, as amended.

2.4. "Director" means the person appointed by the air pollution control commission to act as the director or the director's designated representative.

2.5. "Information" means any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics and all air quality data, emission data, and permit applications.

2.6. "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature.

2.7. "Trade Secrets" means records or information relating to processes or production techniques unique to the owner or operator.

2.8. "Unreleased Financial Data" means data relating to the profits and costs of the owner or operator that have not previously been released to the public.

§45-31-3. Confidential Information.

3.1. The following information furnished to the director from persons subject to section twelve, article twenty, chapter sixteen of the West Virginia Code is confidential if specifically marked as confidential at the time such information is submitted, and shall not be made a part of any public record unless the person expressly agrees to its publication:

- a. trade secrets,
- b. unreleased financial data, and
- c. classified information.

3.2. All information marked as confidential shall also be marked by the person who furnishes the information. The person shall state under which of the above categories confidentiality is claimed, for example "Confidential - Trade Secret" or "Confidential - Unreleased Financial Data."

§45-31-4. Request for Inspection.

4.1. Upon receipt of a written request for the inspection of information marked confidential, the director or his designated representative shall review the claim of confidentiality and timely notify the person making the claim of confidentiality and the person making the request for inspection regarding the director's determination of release of such information marked confidential and the reasons therefore. Such notification shall be made by certified mail to both the person claiming confidentiality and the person requesting to inspect information.

4.2. The director's determination made pursuant to this section shall be the final administrative determination for purposes of judicial review. The person making the claim of confidentiality or the person seeking inspection may seek judicial review of the director's determination as provided pursuant to section twelve, article twenty, chapter sixteen of the West Virginia Code, as amended.

§45-31-5. Designee.

5.1. Any person submitting any information claimed to be confidential shall, at the time of submission, provide the name, address, and telephone number of the individual to be contacted if the director receives a request for disclosure of the information claimed to be confidential.

5.2. Notice to the company shall be deemed sufficient so long as the director provides such notice to the designated representative.

§45-31-6. Use of Confidential Material.

6.1. Confidential information may be used by the director and the commission in the prosecution of a violation of any applicable requirement so long as the director requests that such information be sealed from public dissemination pursuant to a protective court order.

§45-31-7. Emission data.

7.1. Emission data including the time and duration of discharges and parameters affecting the atmospheric dispersion of air pollutants shall not be identified as confidential.

§45-31-8. Severability.

The provisions of this legislative rule are severable and if any provision or part thereof shall be held invalid, unconstitutional, or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair any other remaining provisions, sections, or parts of this legislative rule or their application to any persons and circumstances.



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WEST VIRGINIA
AIR POLLUTION
COMMISSION
GASTON CAPERTON
Governor

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY
State Capitol, Room R-151
Charleston, West Virginia 25305-0310
Telephone: (304) 558-3255
Fax No.: (304) 558-4983

JOHN M. RANSON
Cabinet Secretary

June 5, 1992

G. Dale Farley, Director
Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

RE: Proposed Rules - Title 45, Series 31 (Confidential Information)

Dear Dale:

Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby consent to the proposal of the rules specified above.

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

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:cjb
B:RUL-APCC.CJB

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