

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

Division of Environmental Protection
AGENCY: Office of Air Quality TITLE NUMBER: 45
RULE TYPE: Interpretive; CITE AUTHORITY W.Va. Code §22-5-4; W.Va. Code § 22-5-10; W.Va. Code § 29A-1-2(c); and WV45CSR31.
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: 31A

TITLE OF RULE BEING PROPOSED: "Release of Previously Submitted Confidential Information"

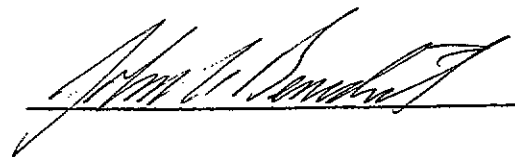
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS

COMMENT PERIOD WILL END ON May 4, 1998 AT 5:00 p.m.

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

John H. Johnston, Chief
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311

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



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

3.40



BUREAU OF ENVIRONMENT

10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

JOHN E. CAFFREY
COMMISSIONER

March 24, 1998

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

RE: 45CSR31A - "Release of Previously Submitted
Confidential Information"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the
above-referenced rule with your office as and Interpretive rule.

Your cooperation in this regard is very much appreciated.
If you have any questions or require additional information,
please feel free to contact Carrie Chambers at 759-0515.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John E. Caffrey".

John E. Caffrey
Commissioner

JEC:cc

Attachment

cc: Karen Watson

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 45CSR31A - "Release of Previously Submitted Confidential Information"

A. AUTHORITY: W.Va. Code §22-5-4; W.Va. Code §22-5-10; W.Va. Code §29A-1-2(c); and WV45CSR31.

B. SUMMARY OF RULE:

The Office of Air Quality's legislative rule, 45CSR31, provides in Section 3.2. that the agency may release information claimed as confidential and submitted prior to September 25, 1997, to the public unless the person who submitted the information establishes their claim of confidentiality in accordance with the rule and within one hundred eighty days of the effective date of the rule. The purpose of 45CSR31A, a proposed new interpretive rule, is to provide guidance and information to the public regarding the procedures and factors involved in the Director's decision whether to release this information.

The proposed rule states that where a person has made a good faith effort to review the information and establish a claim of confidentiality, the Director will give the person a reasonable amount of time to complete the process before making a determination whether to release the information. Where a person has not made a good faith effort to review the information and establish their claim, the Director will provide the person an expedited time period to complete the process (but in no case less than three days) before determining whether to release the information.

The rule also provides that if a person does not comply with the Director's specified time periods, the Director may release the information.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The interpretive rule is required because the time period provided in WVCSR §45-31-3.2 for persons to establish their claims of confidentiality for information submitted prior to September 25, 1997, is scheduled to expire in the near future, at which point the rule provides that the Director may release the information to the public. This interpretive rule will explain to the public under what circumstances and in what manner the information will be released.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR31A - "Release of Previously Submitted Confidential Information"

Type of Rule: Legislative X Interpretive Procedural

Agency: Division of Environmental Protection 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	Thereafter
<i>Estimated Total Cost</i>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
<i>Personal Services</i>	-0-	-0-	-0-	-0-	-0-
<i>Current Expense</i>	-0-	-0-	-0-	-0-	-0-
<i>Repairs and Alterations</i>	-0-	-0-	-0-	-0-	-0-
<i>Equipment</i>	-0-	-0-	-0-	-0-	-0-
<i>Other</i>	-0-	-0-	-0-	-0-	-0-

2. *Explanation of above estimates:*

The Office of Air Quality does not anticipate a need to increase the staff or equipment currently involved in monitoring the review of confidential information submitted before September 25, 1997.

3. *Objectives of these rules:*

To provide guidance and information to the public regarding the Director's decision whether to release such information to the public.

4. *Explanation of overall economic impact of proposed rule.*

A. *Economic impact on state government.*

None expected.

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

None expected.

C. *Economic impact on citizens/public at large.*

None expected.

Date: MARCH 25, 1998

Signature of agency head or authorized representative:



for John H. Johnston, Chief
Office of Air Quality

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

45CSR31A

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

SERIES 31A

RELEASE OF PREVIOUSLY SUBMITTED CONFIDENTIAL INFORMATION

§45-31A-1. General.

1.1. Scope.-- Series 31A establishes some of the factors to be considered pursuant to WVCSR §45-31-3.2 by the Director in his or her decision whether to release confidential information submitted prior to the effective date of WV45CSR31 (September 25, 1997) in response to a written request for the information in accordance with the West Virginia Freedom of Information Act (W.Va. Code §29B-1-1 et seq.).

1.2. Authority.-- W.Va. Code §22-5-4; W.Va. Code §22-5-10; W.Va. Code §29A-1-2(c); and WV45CSR31.

1.3. Filing Date.--

1.4. Effective Date.--

§45-31A-2. Definitions.-- The definitions set forth in WVCSR §45-31-2 shall apply to this rule as though set forth herein.

§45-31A-3. Release of Confidential Information.

3.1. Pursuant to the authority granted in WVCSR §45-31-3.2, the Director will release confidential information submitted to the Office of Air Quality prior to September 25, 1997, in response to a written request for the information only after notifying the person who submitted the confidential information of the request and evaluation of the following factors and in accordance with the following procedures:

3.1.1. Where the person who submitted such information has, in fact, reviewed the requested information and has submitted a cover document establishing a claim of confidentiality in accordance with WV45CSR31, the Director will use the cover document as a basis for the review of the confidentiality claim and the determination whether to release such information. Upon review of the cover document, the Director may request additional information, if necessary to make the

determination whether to release such information to the public. The Director will notify the designee and the person requesting the information of his or her determination in accordance with WVCSR §45-31-4.2.

3.1.2. Where, in the judgment of the Director, the person who submitted such information has made a good faith effort to review the information and to establish a claim of confidentiality in accordance with the requirements of WV45CSR31, but has not been able to complete such process, or documents are identified which were not made available for prior review by the designee under WV45CSR31, the Director will give the person a reasonable time period, depending upon the nature and volume of the requested information, to complete the review of the information and to submit a cover document. Upon review of the cover document, the Director may request any necessary additional information. Such cover document will form the basis of the Director's determination whether to release such information, and the designee and the person requesting the information will be notified of the determination in accordance with WVCSR §45-31-4.2.

3.1.3. Where, in the judgment of the Director, the person who submitted such information has not made a good faith effort to review the information and to establish a claim of confidentiality, the Director will specify an expedited time period (but in no case less than three [3] days from the time of notice under subsection 3.1 of this rule) for the person to review such information and submit a cover document to establish a claim of confidentiality. Upon review of the cover document, the Director may request any necessary additional information. The Director will notify the designee and the person requesting the information of his or her determination in accordance with WVCSR §45-31-4.2.

3.2. Should the person who submitted such confidential information not comply with any of the time periods specified by the Director in accordance with subsection 3.1. of this rule, the Director may release such information after notification in accordance with WVCSR §45-31-4.2.