

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #5

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

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

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

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

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: _____

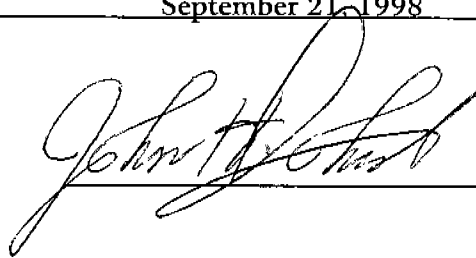
IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 31A

TITLE OF RULE BEING ADOPTED: Release of Previously Submitted Confidential Information

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

EFFECTIVE DATE OF THIS RULE IS September 21, 1998

John H. Johnston, Chief
Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599



\$3.40



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

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
COMMISSIONER

August 19, 1998

Ms. Judy Cooper
Director
Administrative Law Division
Capitol Complex
Charleston, WV 25305

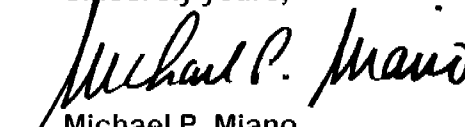
RE: 45CSR31A - "Release of Previously Submitted Confidential Information"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above referenced Interpretive rule as "Notice of Agency Adoption of 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 in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Carrie Chambers
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 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
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

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.

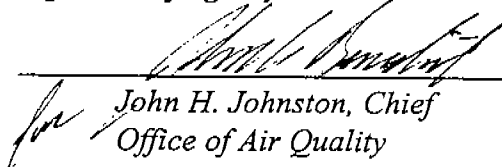
None expected.

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

FILED

45CSR31A

Aug 19 12 58 PM '98

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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.-- August 19, 1998.

1.4. Effective Date.-- September 21, 1998.

§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.a. 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: Provided, That the person who submitted the cover document may submit revisions to the document which the

Director shall consider if received within three (3) days of the notice required under subsection 3.1. 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.b. 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.c. 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) 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., the Director may release such information after notification in accordance with WVCSR §45-31-4.2.

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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SECRETARY OF STATE

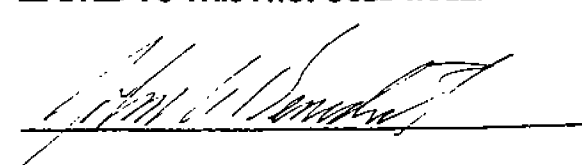
NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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



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



UNION CARBIDE CORPORATION
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

UNION CARBIDE CORPORATION
Responsible Care® Organization
P. O. Box 8004, Bldg. 82-5
South Charleston, WV 25303

April 29, 1998

Mr. John H. Johnston, Chief
West Virginia Office of Air Quality
1558 Washington Street, East
Charleston, West Virginia 25311-2599

Dear Mr. Johnston:

SUBJECT: INTERPERATIVE RULE 31 A SECTION 3.1.2

REFERENCE: John E. Caffrey to Ms. Judy Cooper, March 24, 1998

I would like to make the following comments on the proposed Interpretive Rule 31 A.

For those Facilities who have made a good faith effort to carry out the requirements of WV 45 CSR 31, the Director should nevertheless provide the opportunity to the Facility to have at least three (3) days from the time of notice under subsection 31 of the rule to review such information and submit a cover document (an initial one, or a revised one, as may be warranted) to establish a claim of confidentiality if appropriate.

There may well be documents not available at the time the good faith effort was made, and such documents may not become available until perhaps months later. The Facility may or may not be aware that there were unavailable documents at the time of the good faith effort. Not only is there the issue of protecting the business confidentiality of unavailable documents, there is also the matter that, had these documents been available, it might have influenced the manner in which the redacting, cover documents, etc. were handled for those other documents which were in fact reviewed by the Facility.

Sincerely,

J. L. Worstell
Principal Staff Engineer

JLW/rls

Tammy
Karen
4/30/98
ska

Karen



Tammy
Karen
4/28/98
ga

WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311
Telephone: (304) 342-2123
FAX: (304) 342-4552
wvma@wvma.com

APR 29 12:21

April 28, 1998

John H. Johnston, Chief
Office of Air Quality
West Virginia Division of
Environmental Protection
1558 Washington Street, East
Charleston, WV 25311

Re: Proposed Interpretive Rule, Series 31A,
Confidential Business Information

Dear Chief Johnston:

The West Virginia Manufacturers Association wishes to support the OAQ in promulgating Regulation 31A as an interpretive rule to inform the implementation of Regulation 31 dealing with designation and release of confidential business information. We believe that the proposed rule is an appropriate means, both fairly and administratively, to deal with requests for confidential information, especially in cases where reviews have not been yet completed by companies through no lack of diligence on their part. We appreciate the agency's efforts to deal responsibly with this issue and support putting Regulation 31A into effect.

Very truly yours,

John K. Pitner
Air Team Leader
Environmental, Safety
& Health Committee

cc: Ms. Karen S. Price, President (WVMA)
Brenda Nichols Harper, Esquire

Board of Directors

AEP	Downard Hydraulics, Inc.	Georgia-Pacific Corporation	Marble King, Inc.	Union Carbide Corporation
Ashland Inc.	DuPont	Haltown Paperboard Company	One Valley Bank	W.M. Cramer Lumber Co.
BASF Corporation	Eagle Manufacturing Co.	Hester Industries, Inc.	PPG Industries, Inc.	Weirton Steel Corporation
Bayer, Inc.	Elkem Metals Company	Imation	Quebecor Printing	
Capitol Cement Corporation	Flexsys	Inco Alloys International, Inc.	Ravenswood Aluminum Corp.	
Coming Incorporated	FMC Corporation	Kanawha Manufacturing Co.	Rhone-Poulenc Ag Company	
The Dean Company	GE Plastics	Koppers Industries, Inc.	U.S. Silica Company	

45CSR31A

RELEASE OF PREVIOUSLY SUBMITTED CONFIDENTIAL INFORMATION

RESPONSE TO COMMENTS

On March 25, 1998, the Office of Air Quality (OAQ) filed a Notice of Comment Period on its proposed new interpretive rule 45CSR31A, permitting written comments to be submitted through May 4, 1998. The OAQ received two written comments on the rule from the West Virginia Manufacturers Association and from Union Carbide Corporation. The OAQ has summarized these comments and provides the following response.

Commenter: West Virginia Manufacturers Association

COMMENT:

The West Virginia Manufacturers Association commented in support of the proposed rule, stating that it is an appropriate means, both fairly and administratively, to deal with requests for confidential information, especially in cases where reviews have not been completed by companies through no lack of diligence on their part. The Association supports putting the rule into effect.

RESPONSE:

The OAQ is adopting the rule with the same language as that in the proposed rule, with the exception of one clarification in subsection 3.1.a.. (See Comment and Response below). The rule will become effective thirty (30) days from filing with the Secretary of State.

Commenter: Union Carbide Corporation

COMMENT:

Union Carbide Corporation commented that for those facilities which have made a good faith effort to carry out the requirements of 45CSR31, there should be at least a three-day opportunity from the time of notice under subsection 3.1 of the rule to review the information and submit either an initial cover document or a revised one. There may be documents that were not available at the time the good faith effort was made that are relevant to the agency's determination.

RESPONSE:

The OAQ agrees with the comment and has revised the rule accordingly. The OAQ does not want to preclude a facility from submitting additional materials which supplement or revise its previously submitted cover document when such materials are readily available. However, due to the time constraints under the State Freedom of Information Act and the language of

45CSR31, the revised language only requires the agency to consider additional information received within three (3) days of the notice under subsection 3.1. With respect to the situation where a facility has not completed the review required under 45CSR31 but has been making a good faith effort to do so, subsection 3.1.b. permits the facility a “reasonable time” to submit the required cover document. The OAQ does not believe any additional clarification of the rule is necessary in this regard.