

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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APR 25 3 49 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

Division of Environmental Protection
AGENCY: Office of Air Quality TITLE NUMBER: 45CSR33

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR33

TITLE OF RULE BEING AMENDED: Acid Rain Provisions and Permits

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 4224

SECTION Section 64-3-1(c), PASSED ON March 9, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 1, 1996


AUTHORIZED SIGNATURE

G. Dale Farley
Chief

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

March 12, 1996

G. Dale Farley
DEP - Air Quality
1558 Washington Street East
Charleston, WV 25311

HB 4224 authorizing, **Title 45, Series 33, Acid Rain Provisions & Permits** passed the Legislature on March 9, 1996. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **HB 4224** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 4224 Section 64-3-1(c)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division



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

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

April 24, 1996

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

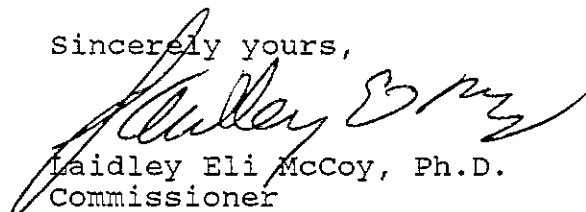
RE: 45CSR33 - "Acid Rain Provisions and Permits"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office the above-captioned rule as final adoption of a legislative rule authorized by the West Virginia Legislature.

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,


Laidley Eli McCoy, Ph.D.
Commissioner

LEM:cc

Attachment

FILED

45CSR33

APR 25 3 48 PM '96

**TITLE 45
LEGISLATIVE RULE**

**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY**

**SERIES 33
ACID RAIN PROVISIONS AND PERMITS**

§45-33-1. General.

1.1 Scope. - This rule establishes general provisions and the operating permit program requirements for affected sources and affected units under the Acid Rain Program promulgated by the United States Environmental Protection Agency under Title IV of the Clean Air Act, as amended. It is the intent of the Director to adopt these standards by reference. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to these standards.

1.2. Authority. - W. Va. Code §§22-5-1 et seq.

1.3. Filing Date. - April 25, 1996

1.4. Effective Date. - May 1, 1996

1.5. Incorporation by Reference - Federal Counterpart Regulation. - The Director has determined that a federal counterpart regulation exists, and in accordance with the Director's recommendation this rule incorporates by reference 40 CFR Part 72 as in effect on June 1, 1995.

§45-33-2. Requirements.

2.1. No person may construct, modify, or operate or cause to be constructed, modified, or operated an Acid Rain source which results or will result in a violation of this rule.

§45-33-3. Definitions.

3.1 "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.

3.2 "Director" shall mean the Director of the West Virginia Division of Environmental Protection or his or her designated representative.

3.3 "Permitting Authority" shall mean the West Virginia Division of Environmental Protection.

§45-33-4. Adoption of Standards.

4.1 The Director hereby adopts and incorporates by reference the provisions of 40 CFR Part 72, including associated reference methods, performance specifications and other test methods which are appended to such standards and contained in 40 CFR Part 72 as in effect on June 1, 1995, for the purposes of implementing an acid rain program that meets the requirements of Title IV of the federal Clean Air Act, as amended.

§45-33-5. Inconsistency Between Rules.

The provisions of this rule shall not be construed as exempting persons subject to this rule from compliance with any other provisions of the Clean Air Act, including the provisions of Title I of the Clean Air Act relating to applicable National Ambient Air Quality Standards, the State Implementation Plan, or any other rules of the West Virginia Division of Environmental Protection, except as expressly provided under Title IV of the Clean Air Act; provided however, that in the event of any inconsistency between the provisions of this rule and any provisions of 45CSR30, the provisions of this rule shall take precedence and shall govern the issuance, denial, revision, reopening, renewal, and appeal of the Acid Rain provision of an operating permit.

SENATE BILL NO. 239

(By Senators Ross, Anderson, Boley,
Buckalew, Grubb and Macnaughtan)

[Introduced January 29, 1996; referred
to the Committee on

NATURAL RESOURCES

THE JUDICIARY

45-33

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9

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate legislative rules relating to
15 acid rain provisions and permits.

16 Be it enacted by the Legislature of West Virginia:

17 That section one, article three, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO

22 PROMULGATE LEGISLATIVE RULES.

23 §64-3-1. Division of environmental protection.

24 (a) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 four, article five, chapter twenty-two, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (requirements for determining conformity of
10 general federal actions to applicable air quality
11 implementation plans (general conformity), 45 CSR 35), are
12 authorized.

13 (b) The legislative rules filed in the state register
14 on the twelfth day of August, one thousand nine hundred
15 ninety-four, authorized under the authority of section
16 four, article five, chapter twenty-two, of this code,
17 modified by the division of environmental protection to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the
20 twenty-third day of November, one thousand nine hundred
21 ninety-four, relating to the division of environmental
22 protection (emission standards for hazardous air pollutants
23 pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

24 (c) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 five, article twenty, chapter sixteen, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (standards of performance for new stationary
10 sources, 45 CSR 16), are authorized with the amendment set
11 forth below:

12 "On page two, section 4, subsection 4.1, subdivision
13 4.1.i, by striking out 'Part 60.195(b)' and inserting in
14 lieu thereof 'Part 60.194(d)';

15 On page two, section 4, subsection 4.1., subdivision
16 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
17 in lieu thereof 'Part 60.335(f)(1)';

18 And,

19 On page two, section 4, after subdivision 'k', by
20 inserting a new subdivision to read as follows:

21 '1. Part 60.335(f)(1).'"

22 (d) The legislative rules filed in the state register
23 on the fifteenth day of August, one thousand nine hundred
24 ninety-four, authorized under the authority of section

1 four, article five, chapter twenty-two, of this code,
2 modified by the division of environmental protection to
3 meet the objections of the legislative rule-making review
4 committee and refiled in the state register on the
5 nineteenth day of December, one thousand nine hundred
6 ninety-four, relating to the division of environmental
7 protection (permits for construction and major modification
8 of major stationary sources of air pollution for the
9 prevention of significant deterioration, 45 CSR 14), are
10 authorized.

11 (e) The legislative rules filed in the state register
12 on the twelfth day of August, one thousand nine hundred
13 ninety-four, authorized under the authority of section
14 four, article five, chapter twenty-two, of this code,
15 modified by the division of environmental protection to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-third day of November, one thousand nine hundred
19 ninety-four, relating to the division of environmental
20 protection (requirements for determining conformity of
21 transportation plans, programs and projects developed,
22 funded or approved under title 23 U.S.C. or the federal
23 transit act, to applicable air quality implementation
24 plans, 45 CSR 36), are authorized.

1 (f) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 ninth day of December, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (to prevent and control air pollution from the
11 operation of coal preparation plants and coal handling
12 operations, 45 CSR 5), are authorized.

13 (g) The legislative rules filed in the state register
14 on the thirteenth day of September, one thousand nine
15 hundred ninety-four, authorized under the authority of
16 section four, article five, chapter twenty-two, of this
17 code, modified by the division of environmental protection
18 to meet the objections of the legislative rule-making
19 review committee and refiled in the state register on the
20 twelfth day of January, one thousand nine hundred
21 ninety-five, relating to the division of environmental
22 protection (to prevent and control air pollution from
23 hazardous waste treatment, storage or disposal facilities,
24 45 CSR 25), are authorized.

1 (h) The legislative rules filed in the state register
2 on the ~~twelfth~~ twenty-eighth day of ~~August~~ July, one
3 thousand nine hundred ~~ninety-four~~ ninety-five, authorized
4 under the authority of section four, article five, chapter
5 twenty-two, of this code, modified by the division of
6 environmental protection to meet the objections of the
7 legislative rule-making review committee and refiled in the
8 state register on the twenty-third day of November, one
9 thousand nine hundred ninety-four, relating to the division
10 of environmental protection (acid rain provisions and
11 permits, 45 CSR 33), are authorized.

12 (i) The legislative rules filed in the state register
13 on the twelfth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section two,
15 article one, chapter twenty-two, of this code, modified by
16 the division of environmental protection to meet the
17 objections of the legislative rule-making review committee
18 and refiled in the state register on the twenty-third day
19 of November, one thousand nine hundred ninety-four,
20 relating to the division of environmental protection
21 (emission standards for hazardous air pollutants pursuant
22 to 40 CFR Part 61, 45 CSR 15), are authorized.

23 (j) The legislative rules filed in the state register
24 on the twelfth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section
2 four, article five, chapter twenty-two, of this code,
3 modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 twenty-third day of November, one thousand nine hundred
7 ninety-four, relating to the division of environmental
8 protection (provisions for determination of compliance with
9 air quality management rules, 45 CSR 38), are authorized.

10 (k) The legislative rules filed in the state register
11 on the twelfth day of August, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 five, article twenty, chapter sixteen, of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the
17 twenty-third day of November, one thousand nine hundred
18 ninety-four, relating to the division of environmental
19 protection (to prevent and control air pollution from
20 combustion of refuse, 45 CSR 6), are authorized.

21 (l) The legislative rules filed in the state register
22 on the fifteenth day of August, one thousand nine hundred
23 ninety-four, authorized under the authority of section
24 four, article fourteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the fourth
4 day of January, one thousand nine hundred ninety-five,
5 relating to the division of environmental protection (dam
6 safety, 47 CSR 34), are authorized with the amendments set
7 forth below:

8 On page 9, section §47-34-3, by striking out
9 3.5.2.c.A, and substituting therefor the following:

10 "3.5.2.c.A. An impoundment exceeding forty (40) feet
11 in height or four hundred (400) acre-feet storage volume
12 shall not be classified as a Class 3 dam."

13 On pages 17 and 18, section §47-34-7, at the end of
14 section 7.1.1.b.C. by adding the following:

15 "The design precipitation for a Class 3 dam may be
16 reduced based on Risk Assessment pursuant to paragraph
17 3.5.4 of this rule, but in no case to less than a P100
18 rainfall of six (6) hours in duration."

19 On page 40, section §47-34-13, by striking out section
20 13.2 and substituting therefor the following:

21 "Performance Requirements - All dams completed before
22 July 1, 1973, shall meet the applicable design requirements
23 of Section 7 of this rule. Those dams which do not meet
24 the applicable design requirement of Section 7 of this rule

1 shall be modified, breached, removed, or properly abandoned
2 pursuant to the provisions of this rule. In developing the
3 required plans, specifications, and documentation necessary
4 to bring the structure into conformity with section 7 of
5 this rule, the design engineer may consider in his
6 submitted analyses, peculiarities and local conditions for
7 each impounding structure with recognition of the many
8 factors involved, some of which may not be precisely known.
9 Existing construction documentation and the historical
10 performance of the structure including documented storms
11 and spillway flows may be considered by the engineer as
12 part of the evaluation of the structure. Upon approval by
13 the Director of the plans, specifications, and
14 documentation submitted by the engineer, the Director may
15 issue a certificate of approval."

16 (m) The legislative rules filed in the state register
17 on the fifteenth day of August, one thousand nine hundred
18 ninety-four, authorized under the authority of section
19 fifteen, article one, chapter twenty-two, of this code,
20 modified by the division of environmental protection to
21 meet the objections of the legislative rule-making review
22 committee and refiled in the state register on the eleventh
23 day of January, one thousand nine hundred ninety-five,
24 relating to the division of environmental protection

1 (regulations governing environmental laboratories
2 certification and standards of performance, 47 CSR 32), are
3 authorized.

4 (n) The legislative rules filed in the state register
5 on the twenty-eighth day of February, one thousand nine
6 hundred ninety-four, authorized under the authority of
7 section three, article two, chapter twenty-two-c, of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 twenty-eighth day of July, one thousand nine hundred
12 ninety-four, relating to the division of environmental
13 protection (state water pollution control revolving fund
14 program, 47 CSR 31), are authorized.

15 (o) The legislative rules filed in the state register
16 on the fifteenth day of August, one thousand nine hundred
17 ninety-four, authorized under the authority of section six,
18 article seventeen, chapter twenty-two, of this code,
19 relating to the division of environmental protection
20 (underground storage tanks, 47 CSR 36), are authorized.

21 (p) The legislative rules filed in the state register
22 on the fifteenth day of August, one thousand nine hundred
23 ninety-four, authorized under the authority of section six,
24 article eighteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the
4 thirteenth day of January, one thousand nine hundred
5 ninety-five, relating to the division of environmental
6 protection (hazardous waste management regulations, 47 CSR
7 35), are authorized.

8 (q) The legislative rules filed in the state register
9 on the twenty-second day of July, one thousand nine hundred
10 ninety-four, authorized under the authority of section
11 four, article three, chapter twenty-two, of this code,
12 modified by the division of environmental protection to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the
15 twenty-ninth day of August, one thousand nine hundred
16 ninety-four, relating to the division of environmental
17 protection (standards for certification of blasters-surface
18 coal mines, 38 CSR 2C), are authorized with the amendments
19 set forth below:

20 On page 4, section 38.2C.4, after the words "Form
21 MR-30-TR." by inserting a second paragraph to read as
22 follows:

23 "In lieu of completing the training program, the
24 applicant for certification or re-certification may

1 complete a self-study course using the study guide and
2 other materials available from the Division of
3 Environmental Protection."

4 On page 8, subsection 8.2, after the words "refresher
5 training course" by inserting the phrase "or complete the
6 self-study course."

7 On page 8 at subsection 10.1 by striking out the
8 phrase "a cessation order and/or take other action as
9 provided in West Virginia Code 22-3-16 and 17" and the
10 phrase "the provisions of West Virginia Code 22-3-1 et
11 seq., rules promulgated under that article, or".

12 On page 9, subsection 11.1, by striking out the
13 subsection and inserting in lieu thereof a new subsection
14 to read as follows: "11.1. **Suspension** - Upon service of a
15 written notice of violation by the Director to a certified
16 blaster, the Director may suspend his or her certification.
17 Prior to the issuance of such an order, the certified
18 blaster shall be granted a hearing before the Director to
19 show cause why his or her certification should not be
20 suspended."

21 On page 9, subsection 11.2, by striking out the phrase
22 "or cessation order" in the first sentence.

23 On page 9, Section 12, by striking out the phrase
24 "cessation order".

1 (r) The legislative rules filed in the state register
2 on the fifteenth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 nine, article three, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the sixth
8 day of January, one thousand nine hundred ninety-five,
9 relating to the division of environmental protection (rules
10 and regulations relating to abandoned mine lands and
11 reclamation, 38 CSR 2D), are authorized.

12 (s) The Legislature hereby authorizes and directs the
13 division of environmental protection to promulgate the
14 legislative rules filed in the state register on February,
15 seventh, one thousand nine hundred ninety-five, authorized
16 under the authority of section five, article twenty,
17 chapter sixteen, of this code, relating to the division of
18 environmental protection (prevention and control of
19 particulate air pollution from combustion of fuel in
20 indirect heat exchangers, 45 CSR 2), effective the first
21 day of May, one thousand nine hundred ninety-five, with the
22 amendments set forth below:
23 On page eight, section 3.4(e) after the word "operated" by
24 adding the words "at normal operating loads";

1 And,

2 On page thirteen, section 9.4 by striking the words
3 "monthly or", and, following the words "quarterly basis" by
4 striking the word "as"; and by inserting the words "unless
5 otherwise" following the words "quarterly basis".

6 And,

7 On page thirteen, by creating a new section, designated
8 section "45.2.10. Variances.

9 10.1. In the event of an unavoidable shortage of fuel
10 having characteristics or specifications necessary for a
11 fuel burning unit to comply with the opacity standards set
12 forth in section 3 or any emergency situation or condition
13 creating a threat to public safety or welfare, the Director
14 may grant an exception to the otherwise applicable visible
15 emission standards for a period not to exceed fifteen (15)
16 days, provided that visible emissions during the exception
17 period do not exceed a maximum six (6) minute average of
18 thirty (30) percent and that a reasonable demonstration is
19 made by the owner or operator that the emission standards
20 under section 4 of this rule will not be exceeded during
21 the exemption period."

22 10.2. In the event a fuel burning unit employing a
23 flue gas desulphurization system must by-pass such system
24 because of necessary planned or unplanned maintenance,

1 visible emissions may not exceed twenty percent (20%)
2 opacity during such period of maintenance. The Director
3 may require advance notice of necessary planned
4 maintenance, including a description of the necessity of
5 the maintenance activity and its expected duration and may
6 limit the duration of the variance or the amount of the
7 excess opacity exception herein allowed. The Director
8 shall be notified of unplanned maintenance and may limit
9 the duration of the variance or the amount of excess
10 opacity exception allowed during unplanned maintenance.

11 And, by renumbering subsequent sections.

12 (t) The legislative rules filed in the state register
13 on the nineteenth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section
15 four, article three, chapter twenty-two, of this code,
16 relating to the division of environmental protection
17 (surface mining and reclamation regulations, 38 CSR 2), are
18 authorized "with the amendments set forth below"

19 On pages 2 and 3, by striking out subsections 1.6, 1.7
20 and 1.8 in their entirety;

21 On page 6, by inserting a new subsection 2.20, to read
22 as follows, and renumbering subsequent subsections;

23 "Chemical Treatment means - the treatment of water
24 from a surface coal mining operation using chemical

1 reagents such as but not limited to sodium hydroxide,
2 calcium carbonate, or anhydrous ammonia for purposes of
3 meeting applicable state and federal effluent limitations.
4 Chemical treatment does not include passive treatment
5 systems such as but not limited to limestone drains,
6 wetlands, alkaline addition, application of flyash,
7 agricultural lime, or injection of flyash, limestone, or
8 other minerals into underground coal operations."

9 On page 16, section 2, by striking out subsection 2.92
10 and renumbering the subsequent subsections.

11 On page 25, by striking the second paragraph of
12 subsection 3.1 (o) and inserting in lieu thereof a new
13 second paragraph 3.1 of subsection 3.1 (o), to read as
14 follows: "Any permit application which references an
15 approved centralized ownership and control file may be
16 determined to be complete and accurate for the purposes of
17 this subsection. Each centralized ownership and control
18 file shall at a minimum:"

19 On page 63, by striking out subsection 3.25 (e).

20 On page 63, by striking out the first sentence in
21 subsection 3.26, and inserting in lieu thereof the
22 following:

23 "(a) All changes including name changes, replacements,
24 and additions to the ownership or control data relative to

1 a permittee or assignee who will function as an operator
2 pursuant to the provisions of paragraph (c) of subsection
3 3.25 of this rule shall be reported to the Director."

4 On page 64, after subsection 3.26 (a) (5) by inserting
5 a new subsection 3.26 (a) (6) to read as follows:

6 "(6) In the event that a permittee or operator has
7 incurred no changes in its ownership and control
8 information and therefore has not been obligated to file
9 a report within any consecutive twelve-month period, that
10 permittee or operator is required to notify the Director in
11 writing that no changes to the information required by
12 paragraphs (b), (c), (d) and (i) of subsection 3.1 of this
13 rule have occurred."

14 On page 64, by striking out subsection 3.27 (a) and
15 inserting in lieu thereof the following:

16 "(a) All active surface mining operations shall be
17 subject to the renewal requirements and provisions for
18 issuance of a renewal discussed in Section 19 of the Act:
19 *Provided*, That the Director may waive the requirement for
20 renewal if the permittee certifies in writing that all coal
21 extraction is completed, that all backfilling and regrading
22 will be completed within sixty (60) days prior to the
23 expiration date of the permit, and that an application for
24 Phase I bond release will be filed prior to the expiration

1 date of the permit. Failure of the permittee complete
2 backfilling and regrading within sixty (60) days prior to
3 the expiration date of the permit will nullify the waiver.

4 Those operations which have been granted inactive
5 status in accordance with subsection 14.11 of this rule
6 shall also be subject to the renewal requirements of
7 Section 19 of the Act.

8 Applications for renewal shall be filed on forms
9 provided by the Director and shall contain at a minimum the
10 following information:"

11 On page 79, by striking out subsection 3.32 (i) and
12 renumbering the remaining subsections.

13 On page 80, subsection 3.34 (b) after the word
14 "criteria" by inserting the words "paragraph (b) of
15 subsection 3.32 of this section";

16 On page 80, by striking out subsection 3.34 (b) (3)
17 and substituting therefor a new subsection 3.34 (b) (3), to
18 read as follows: "(3) The permittee was linked to a
19 violation, penalty or fee through ownership or control,
20 under the violation review criteria, paragraph (b) of
21 subsection 3.32 of this section at the time the permit was
22 issued and an ownership or control link between the
23 permittee and the person responsible for the violation,
24 penalty or fee still exists, or when the link was severed

1 the permittee continues to be responsible for the
2 violation, penalty or fee."

3 On page 82, by striking out subsection 3.34 (g) and
4 substituting therefor a new subparagraph (g) to read as
5 follows:

6 "(g) For purposes of this subsection, a permit is
7 issued when it is originally approved, as well as when a
8 transfer, assignment, or sale of permit rights is approved
9 pursuant to paragraphs (a) or (c), subsection 3.25 of this
10 rule, or where a permit is revised pursuant to subsection
11 3.26 of this rule."

12 On page 86, at the end of subsection 4.4, by adding
13 the following sentence: "Prospecting roads are to be
14 designed, constructed, maintained, and reclaimed in
15 accordance with the provisions of subsection 13.6 of this
16 rule."

17 On page 88, by inserting a new subsection 4.7 (a) (1)
18 to read as follows: (1) Minimize downstream sedimentation
19 and flooding and renumbering the remaining subsections.

20 On page 92, subsection 4.12, by inserting a new
21 sentence between the second and third sentence which reads
22 as follows: "Where the certification statement indicates a
23 change from the design standards or construction
24 requirements approved in the permit, such changes will be

1 documented in as-built plans and submitted for approval to
2 the Director as a permit revision."

3 On Page 148, section 11.6 (a) in the underscored
4 language, after the word, "completed" by inserting the
5 words "or nearly completed".

6 On Page 223, by striking out subsection 14.14 (g) (8)
7 and inserting in lieu thereof a new subsection 14.14 (g)
8 (8), to read as follows: "(8) Surface water runoff from
9 areas above and adjacent to the fill shall be diverted into
10 properly designed and constructed stabilized diversion
11 channels which have been designed using best current
12 technology to safely pass the peak runoff from a 100 year,
13 24-hour precipitation event. The channel shall be designed
14 and constructed to ensure stability of the fill, control
15 erosion, and minimize water infiltration into the fill."

16 On Page 232, by inserting a new subsection, designated
17 subsection 14.19 (d) to read as follows: "(d) Timber from
18 clearing and grubbing operations may be wind-rowed below
19 the projected toe of the outslope in a manner that will
20 provide shelter and habitat for game and non-game wildlife
21 and provide for enhanced sediment control. These materials
22 may not be placed in natural water courses or where they
23 will be covered by spoil material at the toe of the
24 outslope. The wind-rows must be of relatively uniform

1 height and width and must be more or less evenly
2 distributed along the lower reaches and within the permit
3 area."

4 On Page 240, subsection 17.1, in the first sentence,
5 after the words "mining and reclamation," by striking out
6 the remainder of the paragraph and substituting therefor
7 the following: "required by the Act and these Rules,
8 including the engineering analyses and designs; the
9 development of cross-section maps and plans; the geologic
10 drilling and statement of results of test borings and core
11 samplings; preblast surveys; the collection of
12 site-specific resource information and production of
13 protection and enhancement plans for fish and wildlife
14 habitats and other environmental values; and the collection
15 of archaeological and historical information; and any other
16 archaeological and historical information required by the
17 federal department of the interior and the preparation of
18 plans that may be necessitated thereby; and the director
19 shall provide or assume the cost of training coal operators
20 that meet the qualifications concerning the preparation of
21 permit applications and compliance with the regulatory
22 program, and shall ensure that qualified coal operators are
23 aware of the assistance available under this section.

24 On Page 240, subsection 17.1, after the first

1 paragraph by inserting a new paragraph, to read as follows:
2 "The Director will develop a procedure for the interstate
3 coordination and exchange of information collected under
4 the Small Operators Assistance Program."

5 On Page 241, by striking out subsection 17.4 in its
6 entirety and substituting therefor the following: "17.4
7 Request for Assistance. Each applicant requesting
8 assistance shall provide information on forms provided by
9 the director in an application that shall be clear and
10 concise and shall be provided in a format prescribed by the
11 Director and/or a format required by the Federal Office of
12 Surface Mining Reclamation and Enforcement."

13 On Page 249, subsection 17.7 (a) (4), after the words
14 "twelve (12) month period" by striking the remainder of the
15 sentence and inserting in lieu thereof the words
16 "immediately following permit issuance."

17 On page 273, subsection 20.6 (a), after the word
18 "first" by striking out the words "thirty (30)" and
19 inserting in lieu thereof the word "fifteen".

20 On page 273, subsection 20.6 (c), after the words
21 "date of the" by striking out the words "Assessment Officer
22 receiving the
23 finding specified in paragraph (a) of this subsection." and
24 inserting in lieu thereof the words "issuance of a notice

1 or order";

2 On page 274, subsection 20.6 (d), by striking out the
3 first sentence, and inserting in lieu thereof the
4 following: "The time and place of an informal assessment
5 conference shall be posted at the Department of
6 Environmental Protection Office nearest to the operation.

7

8 NOTE: The purpose of this bill is to authorize the
9 Division of Environmental Protection to promulgate
10 legislative rules relating to acid rain provisions and
11 permits.

12

13 Strike-throughs indicate language that would be
14 stricken from the present law, and underscoring indicates
15 new language that would be added.

1137

H. B. 4311

(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)

(Introduced January 29, 1996; referred to the
Committee on the Judiciary)

45-33

A BILL to amend and reenact section one, article three,
chapter sixty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to authorizing the division of environmental
protection to promulgate legislative rules relating to
acid rain provisions and permits.

Be it enacted by the Legislature of West Virginia:

That section one, article three, chapter sixty-four of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted, to read
as follows:

ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO
PROMULGATE LEGISLATIVE RULES.

§64-3-1. Division of environmental protection.

(a) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 four, article five, chapter twenty-two, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (requirements for determining conformity of
10 general federal actions to applicable air quality
11 implementation plans (general conformity), 45 CSR 35), are
12 authorized.

13 (b) The legislative rules filed in the state register
14 on the twelfth day of August, one thousand nine hundred
15 ninety-four, authorized under the authority of section
16 four, article five, chapter twenty-two, of this code,
17 modified by the division of environmental protection to
18 meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the
20 twenty-third day of November, one thousand nine hundred
21 ninety-four, relating to the division of environmental
22 protection (emission standards for hazardous air pollutants
23 pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

24 (c) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 five, article twenty, chapter sixteen, of this code,
4 modified by the division of environmental protection to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-third day of November, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (standards of performance for new stationary
10 sources, 45 CSR 16), are authorized with the amendment set
11 forth below:

12 "On page two, section 4, subsection 4.1, subdivision
13 4.1.i, by striking out 'Part 60.195(b)' and inserting in
14 lieu thereof 'Part 60.194(d)';

15 On page two, section 4, subsection 4.1., subdivision
16 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
17 in lieu thereof 'Part 60.335(f)(1)';

18 And,

19 On page two, section 4, after subdivision 'k', by
20 inserting a new subdivision to read as follows:

21 '1. Part 60.335(f)(1).'

22 (d) The legislative rules filed in the state register
23 on the fifteenth day of August, one thousand nine hundred
24 ninety-four, authorized under the authority of section

1 four, article five, chapter twenty-two, of this code,
2 modified by the division of environmental protection to
3 meet the objections of the legislative rule-making review
4 committee and refiled in the state register on the
5 nineteenth day of December, one thousand nine hundred
6 ninety-four, relating to the division of environmental
7 protection (permits for construction and major modification
8 of major stationary sources of air pollution for the
9 prevention of significant deterioration, 45 CSR 14), are
10 authorized.

11 (e) The legislative rules filed in the state register
12 on the twelfth day of August, one thousand nine hundred
13 ninety-four, authorized under the authority of section
14 four, article five, chapter twenty-two, of this code,
15 modified by the division of environmental protection to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-third day of November, one thousand nine hundred
19 ninety-four, relating to the division of environmental
20 protection (requirements for determining conformity of
21 transportation plans, programs and projects developed,
22 funded or approved under title 23 U.S.C. or the federal
23 transit act, to applicable air quality implementation
24 plans, 45 CSR 36), are authorized.

1 (f) The legislative rules filed in the state register
2 on the twelfth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 four, article five, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 ninth day of December, one thousand nine hundred
9 ninety-four, relating to the division of environmental
10 protection (to prevent and control air pollution from the
11 operation of coal preparation plants and coal handling
12 operations, 45 CSR 5), are authorized.

13 (g) The legislative rules filed in the state register
14 on the thirteenth day of September, one thousand nine
15 hundred ninety-four, authorized under the authority of
16 section four, article five, chapter twenty-two, of this
17 code, modified by the division of environmental protection
18 to meet the objections of the legislative rule-making
19 review committee and refiled in the state register on the
20 twelfth day of January, one thousand nine hundred
21 ninety-five, relating to the division of environmental
22 protection (to prevent and control air pollution from
23 hazardous waste treatment, storage or disposal facilities,
24 45 CSR 25), are authorized.

1 (h) The legislative rules filed in the state register
2 on the ~~twelfth~~ twenty-eighth day of ~~August~~ July, one
3 thousand nine hundred ~~ninety-four~~ ninety-five, authorized
4 under the authority of section four, article five, chapter
5 twenty-two, of this code, modified by the division of
6 ~~environmental protection to meet the objections of the~~
7 ~~legislative rule-making review committee and refiled in the~~
8 ~~state register on the twenty-third day of November, one~~
9 ~~thousand nine hundred ninety-four~~, relating to the division
10 of environmental protection (acid rain provisions and
11 permits, 45 CSR 33), are authorized.

12 (i) The legislative rules filed in the state register
13 on the twelfth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section two,
15 article one, chapter twenty-two, of this code, modified by
16 the division of environmental protection to meet the
17 objections of the legislative rule-making review committee
18 and refiled in the state register on the twenty-third day
19 of November, one thousand nine hundred ninety-four,
20 relating to the division of environmental protection
21 (emission standards for hazardous air pollutants pursuant
22 to 40 CFR Part 61, 45 CSR 15), are authorized.

23 (j) The legislative rules filed in the state register
24 on the twelfth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section
2 four, article five, chapter twenty-two, of this code,
3 modified by the division of environmental protection to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 twenty-third day of November, one thousand nine hundred
7 ninety-four, relating to the division of environmental
8 protection (provisions for determination of compliance with
9 air quality management rules, 45 CSR 38), are authorized.

10 (k) The legislative rules filed in the state register
11 on the twelfth day of August, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 five, article twenty, chapter sixteen, of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the
17 twenty-third day of November, one thousand nine hundred
18 ninety-four, relating to the division of environmental
19 protection (to prevent and control air pollution from
20 combustion of refuse, 45 CSR 6), are authorized.

21 (l) The legislative rules filed in the state register
22 on the fifteenth day of August, one thousand nine hundred
23 ninety-four, authorized under the authority of section
24 four, article fourteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the fourth
4 day of January, one thousand nine hundred ninety-five,
5 relating to the division of environmental protection (dam
6 safety, 47 CSR 34), are authorized with the amendments set
7 forth below:

8 On page 9, section §47-34-3, by striking out
9 3.5.2.c.A, and substituting therefor the following:

10 "3.5.2.c.A. An impoundment exceeding forty (40) feet
11 in height or four hundred (400) acre-feet storage volume
12 shall not be classified as a Class 3 dam."

13 On pages 17 and 18, section §47-34-7, at the end of
14 section 7.1.1.b.C. by adding the following:

15 "The design precipitation for a Class 3 dam may be
16 reduced based on Risk Assessment pursuant to paragraph
17 3.5.4 of this rule, but in no case to less than a P100
18 rainfall of six (6) hours in duration."

19 On page 40, section §47-34-13, by striking out section
20 13.2 and substituting therefor the following:

21 "Performance Requirements - All dams completed before
22 July 1, 1973, shall meet the applicable design requirements
23 of Section 7 of this rule. Those dams which do not meet
24 the applicable design requirement of Section 7 of this rule

1 shall be modified, breached, removed, or properly abandoned
2 pursuant to the provisions of this rule. In developing the
3 required plans, specifications, and documentation necessary
4 to bring the structure into conformity with section 7 of
5 this rule, the design engineer may consider in his
6 submitted analyses, peculiarities and local conditions for
7 each impounding structure with recognition of the many
8 factors involved, some of which may not be precisely known.
9 Existing construction documentation and the historical
10 performance of the structure including documented storms
11 and spillway flows may be considered by the engineer as
12 part of the evaluation of the structure. Upon approval by
13 the Director of the plans, specifications, and
14 documentation submitted by the engineer, the Director may
15 issue a certificate of approval."

16 (m) The legislative rules filed in the state register
17 on the fifteenth day of August, one thousand nine hundred
18 ninety-four, authorized under the authority of section
19 fifteen, article one, chapter twenty-two, of this code,
20 modified by the division of environmental protection to
21 meet the objections of the legislative rule-making review
22 committee and refiled in the state register on the eleventh
23 day of January, one thousand nine hundred ninety-five,
24 relating to the division of environmental protection

1 (regulations governing environmental laboratories
2 certification and standards of performance, 47 CSR 32), are
3 authorized.

4 (n) The legislative rules filed in the state register
5 on the twenty-eighth day of February, one thousand nine
6 hundred ninety-four, authorized under the authority of
7 section three, article two, chapter twenty-two-c, of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 twenty-eighth day of July, one thousand nine hundred
12 ninety-four, relating to the division of environmental
13 protection (state water pollution control revolving fund
14 program, 47 CSR 31), are authorized.

15 (o) The legislative rules filed in the state register
16 on the fifteenth day of August, one thousand nine hundred
17 ninety-four, authorized under the authority of section six,
18 article seventeen, chapter twenty-two, of this code,
19 relating to the division of environmental protection
20 (underground storage tanks, 47 CSR 36), are authorized.

21 (p) The legislative rules filed in the state register
22 on the fifteenth day of August, one thousand nine hundred
23 ninety-four, authorized under the authority of section six,
24 article eighteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the
4 thirteenth day of January, one thousand nine hundred
5 ninety-five, relating to the division of environmental
6 protection (hazardous waste management regulations, 47 CSR
7 35), are authorized.

8 (g) The legislative rules filed in the state register
9 on the twenty-second day of July, one thousand nine hundred
10 ninety-four, authorized under the authority of section
11 four, article three, chapter twenty-two, of this code,
12 modified by the division of environmental protection to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the
15 twenty-ninth day of August, one thousand nine hundred
16 ninety-four, relating to the division of environmental
17 protection (standards for certification of blasters-surface
18 coal mines, 38 CSR 2C), are authorized with the amendments
19 set forth below:

20 On page 4, section 38.2C.4, after the words "Form
21 MR-30-TR," by inserting a second paragraph to read as
22 follows:

23 "In lieu of completing the training program, the
24 applicant for certification or re-certification may

1 complete a self-study course using the study guide and
2 other materials available from the Division of
3 Environmental Protection."

4 On page 8, subsection 8.2, after the words "refresher
5 training course" by inserting the phrase "or complete the
6 self-study course."

7 On page 8 at subsection 10.1 by striking out the
8 phrase "a cessation order and/or take other action as
9 provided in West Virginia Code 22-3-16 and 17" and the
10 phrase "the provisions of West Virginia Code 22-3-1 et
11 seq., rules promulgated under that article, or".

12 On page 9, subsection 11.1, by striking out the
13 subsection and inserting in lieu thereof a new subsection
14 to read as follows: "11.1. Suspension - Upon service of a
15 written notice of violation by the Director to a certified
16 blaster, the Director may suspend his or her certification.
17 Prior to the issuance of such an order, the certified
18 blaster shall be granted a hearing before the Director to
19 show cause why his or her certification should not be
20 suspended."

21 On page 9, subsection 11.2, by striking out the phrase
22 "or cessation order" in the first sentence.

23 On page 9, Section 12, by striking out the phrase
24 "cessation order".

1 (r) The legislative rules filed in the state register
2 on the fifteenth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 nine, article three, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the sixth
8 day of January, one thousand nine hundred ninety-five,
9 relating to the division of environmental protection (rules
10 and regulations relating to abandoned mine lands and
11 reclamation, 38 CSR 2D), are authorized.

12 (s) The Legislature hereby authorizes and directs the
13 division of environmental protection to promulgate the
14 legislative rules filed in the state register on February,
15 seventh, one thousand nine hundred ninety-five, authorized
16 under the authority of section five, article twenty,
17 chapter sixteen, of this code, relating to the division of
18 environmental protection (prevention and control of
19 particulate air pollution from combustion of fuel in
20 indirect heat exchangers, 45 CSR 2), effective the first
21 day of May, one thousand nine hundred ninety-five, with the
22 amendments set forth below:
23 On page eight, section 3.4(e) after the word "operated" by
24 adding the words "at normal operating loads";

1 And,

2 On page thirteen, section 9.4 by striking the words
3 "monthly or", and, following the words "quarterly basis" by
4 striking the word "as"; and by inserting the words "unless
5 otherwise" following the words "quarterly basis".

6 And,

7 On page thirteen, by creating a new section, designated
8 section "45.2.10. Variances.

9 10.1. In the event of an unavoidable shortage of fuel
10 having characteristics or specifications necessary for a
11 fuel burning unit to comply with the opacity standards set
12 forth in section 3 or any emergency situation or condition
13 creating a threat to public safety or welfare, the Director
14 may grant an exception to the otherwise applicable visible
15 emission standards for a period not to exceed fifteen (15)
16 days, provided that visible emissions during the exception
17 period do not exceed a maximum six (6) minute average of
18 thirty (30) percent and that a reasonable demonstration is
19 made by the owner or operator that the emission standards
20 under section 4 of this rule will not be exceeded during
21 the exemption period."

22 10.2. In the event a fuel burning unit employing a
23 flue gas desulphurization system must by-pass such system
24 because of necessary planned or unplanned maintenance,

1 visible emissions may not exceed twenty percent (20%)
2 opacity during such period of maintenance. The Director
3 may require advance notice of necessary planned
4 maintenance, including a description of the necessity of
5 the maintenance activity and its expected duration and may
6 limit the duration of the variance or the amount of the
7 excess opacity exception herein allowed. The Director
8 shall be notified of unplanned maintenance and may limit
9 the duration of the variance or the amount of excess
10 opacity exception allowed during unplanned maintenance.

11 And, by renumbering subsequent sections.

12 (t) The legislative rules filed in the state register
13 on the nineteenth day of August, one thousand nine hundred
14 ninety-four, authorized under the authority of section
15 four, article three, chapter twenty-two, of this code,
16 relating to the division of environmental protection
17 (surface mining and reclamation regulations, 38 CSR 2), are
18 authorized "with the amendments set forth below"

19 On pages 2 and 3, by striking out subsections 1.6, 1.7
20 and 1.8 in their entirety;

21 On page 6, by inserting a new subsection 2.20, to read
22 as follows, and renumbering subsequent subsections;

23 "Chemical Treatment means - the treatment of water
24 from a surface coal mining operation using chemical

1 reagents such as but not limited to sodium hydroxide,
2 calcium carbonate, or anhydrous ammonia for purposes of
3 meeting applicable state and federal effluent limitations.
4 Chemical treatment does not include passive treatment
5 systems such as but not limited to limestone drains,
6 wetlands, alkaline addition, application of flyash,
7 agricultural lime, or injection of flyash, limestone, or
8 other minerals into underground coal operations."

9 On page 16, section 2, by striking out subsection 2.92
10 and renumbering the subsequent subsections.

11 On page 25, by striking the second paragraph of
12 subsection 3.1 (o) and inserting in lieu thereof a new
13 second paragraph 3.1 of subsection 3.1 (o), to read as
14 follows: "Any permit application which references an
15 approved centralized ownership and control file may be
16 determined to be complete and accurate for the purposes of
17 this subsection. Each centralized ownership and control
18 file shall at a minimum:"

19 On page 63, by striking out subsection 3.25 (e).

20 On page 63, by striking out the first sentence in
21 subsection 3.26, and inserting in lieu thereof the
22 following:

23 "(a) All changes including name changes, replacements,
24 and additions to the ownership or control data relative to

1 a permittee or assignee who will function as an operator
2 pursuant to the provisions of paragraph (c) of subsection
3 3.25 of this rule shall be reported to the Director."

4 On page 64, after subsection 3.26 (a) (5) by inserting
5 a new subsection 3.26 (a) (6) to read as follows:

6 "(6) In the event that a permittee or operator has
7 incurred no changes in its ownership and control
8 information and therefore has not been obligated to file
9 a report within any consecutive twelve-month period, that
10 permittee or operator is required to notify the Director in
11 writing that no changes to the information required by
12 paragraphs (b), (c), (d) and (i) of subsection 3.1 of this
13 rule have occurred."

14 On page 64, by striking out subsection 3.27 (a) and
15 inserting in lieu thereof the following:

16 "(a) All active surface mining operations shall be
17 subject to the renewal requirements and provisions for
18 issuance of a renewal discussed in Section 19 of the Act:
19 *Provided*, That the Director may waive the requirement for
20 renewal if the permittee certifies in writing that all coal
21 extraction is completed, that all backfilling and regrading
22 will be completed within sixty (60) days prior to the
23 expiration date of the permit, and that an application for
24 Phase I bond release will be filed prior to the expiration

1 date of the permit. Failure of the permittee complete
2 backfilling and regrading within sixty (60) days prior to
3 the expiration date of the permit will nullify the waiver.

4 Those operations which have been granted inactive
5 status in accordance with subsection 14.11 of this rule
6 shall also be subject to the renewal requirements of
7 Section 19 of the Act.

8 Applications for renewal shall be filed on forms
9 provided by the Director and shall contain at a minimum the
10 following information:"

11 On page 79, by striking out subsection 3.32 (i) and
12 renumbering the remaining subsections.

13 On page 80, subsection 3.34 (b) after the word
14 "criteria" by inserting the words "paragraph (b) of
15 subsection 3.32 of this section";

16 On page 80, by striking out subsection 3.34 (b) (3)
17 and substituting therefor a new subsection 3.34 (b) (3), to
18 read as follows: "(3) The permittee was linked to a
19 violation, penalty or fee through ownership or control,
20 under the violation review criteria, paragraph (b) of
21 subsection 3.32 of this section at the time the permit was
22 issued and an ownership or control link between the
23 permittee and the person responsible for the violation,
24 penalty or fee still exists, or when the link was severed

1 the permittee continues to be responsible for the
2 violation, penalty or fee."

3 On page 82, by striking out subsection 3.34 (g) and
4 substituting therefor a new subparagraph (g) to read as
5 follows:

6 "(g) For purposes of this subsection, a permit is
7 issued when it is originally approved, as well as when a
8 transfer, assignment, or sale of permit rights is approved
9 pursuant to paragraphs (a) or (c), subsection 3.25 of this
10 rule, or where a permit is revised pursuant to subsection
11 3.26 of this rule."

12 On page 86, at the end of subsection 4.4, by adding
13 the following sentence: "Prospecting roads are to be
14 designed, constructed, maintained, and reclaimed in
15 accordance with the provisions of subsection 13.6 of this
16 rule."

17 On page 88, by inserting a new subsection 4.7 (a) (1)
18 to read as follows: (1) Minimize downstream sedimentation
19 and flooding and renumbering the remaining subsections.

20 On page 92, subsection 4.12, by inserting a new
21 sentence between the second and third sentence which reads
22 as follows: "Where the certification statement indicates a
23 change from the design standards or construction
24 requirements approved in the permit, such changes will be

1 documented in as-built plans and submitted for approval to
2 the Director as a permit revision."

3 On Page 148, section 11.6 (a) in the underscored
4 language, after the word, "completed" by inserting the
5 words "or nearly completed".

6 On Page 223, by striking out subsection 14.14 (g) (8)
7 and inserting in lieu thereof a new subsection 14.14 (g)
8 (8), to read as follows: "(8) Surface water runoff from
9 areas above and adjacent to the fill shall be diverted into
10 properly designed and constructed stabilized diversion
11 channels which have been designed using best current
12 technology to safely pass the peak runoff from a 100 year,
13 24-hour precipitation event. The channel shall be designed
14 and constructed to ensure stability of the fill, control
15 erosion, and minimize water infiltration into the fill."

16 On Page 232, by inserting a new subsection, designated
17 subsection 14.19 (d) to read as follows: "(d) Timber from
18 clearing and grubbing operations may be wind-rowed below
19 the projected toe of the outslope in a manner that will
20 provide shelter and habitat for game and non-game wildlife
21 and provide for enhanced sediment control. These materials
22 may not be placed in natural water courses or where they
23 will be covered by spoil material at the toe of the
24 outslope. The wind-rows must be of relatively uniform

1 height and width and must be more or less evenly
2 distributed along the lower reaches and within the permit
3 area."

4 On Page 240, subsection 17.1, in the first sentence,
5 after the words "mining and reclamation," by striking out
6 the remainder of the paragraph and substituting therefor
7 the following: "required by the Act and these Rules,
8 including the engineering analyses and designs; the
9 development of cross-section maps and plans; the geologic
10 drilling and statement of results of test borings and core
11 samplings; preblast surveys; the collection of
12 site-specific resource information and production of
13 protection and enhancement plans for fish and wildlife
14 habitats and other environmental values; and the collection
15 of archaeological and historical information; and any other
16 archaeological and historical information required by the
17 federal department of the interior and the preparation of
18 plans that may be necessitated thereby; and the director
19 shall provide or assume the cost of training coal operators
20 that meet the qualifications concerning the preparation of
21 permit applications and compliance with the regulatory
22 program, and shall ensure that qualified coal operators are
23 aware of the assistance available under this section.

24 On Page 240, subsection 17.1, after the first

1 paragraph by inserting a new paragraph, to read as follows:
2 "The Director will develop a procedure for the interstate
3 coordination and exchange of information collected under
4 the Small Operators Assistance Program."

5 On Page 241, by striking out subsection 17.4 in its
6 entirety and substituting therefor the following: "17.4
7 Request for Assistance. Each applicant requesting
8 assistance shall provide information on forms provided by
9 the director in an application that shall be clear and
10 concise and shall be provided in a format prescribed by the
11 Director and/or a format required by the Federal Office of
12 Surface Mining Reclamation and Enforcement."

13 On Page 249, subsection 17.7 (a) (4), after the words
14 "twelve (12) month period" by striking the remainder of the
15 sentence and inserting in lieu thereof the words
16 "immediately following permit issuance."

17 On page 273, subsection 20.6 (a), after the word
18 "first" by striking out the words "thirty (30)" and
19 inserting in lieu thereof the word "fifteen".

20 On page 273, subsection 20.6 (c), after the words
21 "date of the" by striking out the words "Assessment Officer
22 receiving the
23 finding specified in paragraph (a) of this subsection." and
24 inserting in lieu thereof the words "issuance of a notice

1 or order";

2 On page 274, subsection 20.6 (d), by striking out the
3 first sentence, and inserting in lieu thereof the
4 following: "The time and place of an informal assessment
5 conference shall be posted at the Department of
6 Environmental Protection Office nearest to the operation.

7

8 NOTE: The purpose of this bill is to authorize the
9 Division of Environmental Protection to promulgate
10 legislative rules relating to acid rain provisions and
11 permits.

12
13 Strike-throughs indicate language that would be
14 stricken from the present law, and underscoring indicates
15 new language that would be added.

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OCT 28 10 18 AM '96 JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

(Plus all the volunteer
help we can get)

TO: G. Dale Farley

AGENCY: DEP-Air Quality

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 11, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 33 TITLE: 45 DEP-Air Quality

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Jamra S. Maurer

TITLE OF PERSON SIGNING: Administrative Secretary

DATE: October 25, 1996

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.