

WEST VIRGINIA SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

FILED

JUN 21 4 15 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection TITLE NUMBER: 45

RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 33

TITLE OF RULE BEING PROPOSED: Acid Rain Provisions and Permits

DATE OF PUBLIC HEARING: July 29, 1994 TIME: 9:00 am

LOCATION OF PUBLIC HEARING: WVDEP - Office of Air Quality

1558 Washington Street East

Charleston WV 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Office of Air Quality

1558 Washington Street E

Charleston WV 25311

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

3.80

45CSR33

ACID RAIN PROVISIONS AND PERMITS

SUMMARY

Title IV of the federal Clean Air Act, as amended, November 15, 1990, requires the EPA to establish an Acid Rain Program to reduce the adverse affects of acidic deposition. Acid rain is caused by the burning of fossil fuels which release emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) into the atmosphere. Once in the air, these compounds undergo chemical reactions resulting in the formation of sulfuric and nitric acid which damage ecosystems and man-made materials, pose a threat to human health, and reduce visibility. Of approximately 23 million tons of sulfur dioxide and 19 million tons of nitrogen oxides emitted annually from all sources in the United States in 1985, about 16 million tons of sulfur dioxide and 7 million tons of nitrogen oxides were emitted by electric utilities.

Title IV establishes a national emissions cap of 8.95 million tons per year on electric utility sulfur dioxide emissions to be implemented in two phases. Phase I beginning in 1995, requires the 110 highest emitting utility plants, 5 of which are in West Virginia, to meet intermediate sulfur dioxide emission limitations. By the year 2000 when Phase II begins, all other utility units with an output capacity greater than 25 megawatts and all new utility units will be required to meet emissions limitations. There are 16 potential Phase II utility plants in West Virginia. The acid rain program will reduce total sulfur dioxide emissions by approximately 40% national over the 1980 levels. The nitrogen oxides emissions, being addressed in other provisions of the Act, will require certain coal fired utility boilers to reduce their nitrogen oxides emissions through the use of low nitrogen oxides burner technologies.

The Title IV requirements must be implemented by the State through adoption of the national operating permit system conforming to Title IV and V of the Clean Air Act. Phase I permit applications were submitted to USEPA by February 15, 1993, and processed by EPA. Phase II permit applications must be submitted by January 1, 1996, and will be processed by the State assuming the State has an approved Title V Operating Permit Program (via 45CSR30) and this approved Title IV rule.

45CSR33

ACID RAIN PROVISIONS AND PERMITS

STATEMENT OF CIRCUMSTANCES

Under the Acid Rain Program promulgated by the United States Environmental Protection Agency, pursuant to Title IV of the Clean Air Act, as amended, no person may construct, modify, or operate or cause to be constructed, modified, or operated, an Acid Rain source in violation of 40 CFR Part 72. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act, as amended.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR33 - Acid Rain Provisions and Permits

Type of Rule: X Legislative _____ Interpretive _____ Procedural _____

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

| 1. Effect of Proposed Rule | Annual | | Fiscal Year | | |
|----------------------------|----------|----------|-------------|--------|-------------|
| | Increase | Decrease | Current | Next | There-after |
| Estimated Total Cost | \$ -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: Costs incurred are covered under the budget estimate for implementing the Clean Air Act, as amended, under 45CSR30 promulgated by the Legislature during the 1994 Session.

3. Objectives of these rules: 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.

4. Explanation of overall economic impact of proposed rule.
 - A. Economic impact on state government.

See Section 2.

Appendix B
Fiscal Note For Proposed Rules
Page Two

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

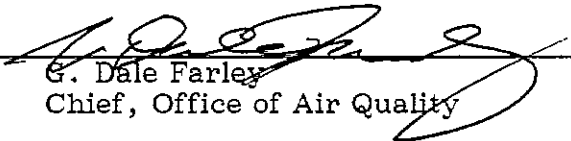
No impact above that resulting from the currently applicable federal requirements.

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

No impact above that resulting from the currently applicable federal requirements.

Date: June 21, 1994

Signature of agency head or authorized representative:


G. Dale Farley
Chief, Office of Air Quality

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

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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. -

1.4. Effective Date. -

1.5. Incorporation by Reference - Federal Counterpart Regulation. - This rule is necessary for the State to fulfill its responsibility under the Clean Air Act, as amended, and, with the exceptions noted, incorporates, by reference, the federal counterpart rule (40 CFR Part 72), in accordance with the Director's recommendation.

1.6. The Director has determined that this rule is no more or no less stringent than the federal counterpart rule.

1.7. Constitutional Takings Determination. - The Director has determined that this rule will not result in the constitutional taking of real property.

§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 violations 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.

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, 1994, 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. Director.

5.1 Any and all references in said 40 CFR Part 72 to the "Administrator" is amended to be the "Director" except in the following references which shall remain "Administrator."

5.1.a. Part 72.2 pertaining to the definition of:

account number
acid rain emissions limitation
actual SO₂ emissions rate
administrátor
allocate or allocation
allowance
allowance deduction
allowances held
allowance reserve
allowance tracking
allowance tracking system
alternative monitoring system
automated data acquisition and handling system
award
basic phase II allowance allocations
compliance certification
decisional body
emissions
EPA trial staff
future year subaccount
monitor operating hour
national allowance database
permitting authority
recordation
serial number
State operating permit program

5.1.b. Part 72.7(c)(2)(iii)

5.1.c. Part 72.8(c)(2)(iii)

45CSR33

- 5.1.d. Part 72.9(c)(6)
- 5.1.e. Part 72.9(c)(7)
- 5.1.f. Part 72.12
- 5.1.g. Part 72.30
- 5.1.h. Part 72.33
- 5.1.i. Part 72.41
- 5.1.j. Part 72.42
- 5.1.k. Part 72.43
- 5.1.l. Part 72.44(f)(3)
- 5.1.m. Part 72.44(g)(1)(ii)
- 5.1.n. Part 72.44(g)(2)
- 5.1.o. Part 72.44(g)(2)(iii)
- 5.1.p. Part 72 Subpart F
- 5.1.q. Part 72 Subpart G
- 5.1.r. Part 72.80
- 5.1.s. Part 72.81(c)(1)(i)
- 5.1.t. Part 72.83(b)
- 5.1.u. Part 72.84
- 5.1.v. Part 72.91(b)
- 5.1.w. Part 72.92
- 5.1.x. Part 72.96

§45-33-6. Permits.

Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way be limited or inapplicable.

§45-33-7. Inconsistency Between Rules.

In the event of any inconsistency between this rule and any other existing rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method, rule or regulation.