

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark In this Box

FILED

APR 28 3 44 PM '95

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___, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 45CSR33

TITLE OF RULE BEING PROPOSED: Acid Rain Provisions and Permits

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

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 2134

SECTION 64-3-1(h), PASSED ON March 10, 1995

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 1, 1995

Roger T Hall

AUTHORIZED SIGNATURE
Roger Hall



BUREAU OF ENVIRONMENT
10 McJUNKIN ROAD
NITRO, WV 25143-2506

GASTON CAPERTON
GOVERNOR

DAVID C. CALLAGHAN
COMMISSIONER

April 26, 1995

Ms. Judy Cooper
Director, Administrative Law Division
Secretary of State's Office
Building 1, Suite 157K
Charleston, West Virginia 25305

RE: 45 CSR 33 - Acid Rain Provisions and Permits
For Air Pollution Control

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned rule as a final filing and 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,

A handwritten signature in dark ink, appearing to read "David C. Callaghan".

David C. Callaghan
Commissioner
Bureau of Environment

DCC;RTH:cc

Attachment

LEGISLATIVE HISTORY ABSTRACT
45CSR33

ACID RAIN PROVISIONS AND PERMITS

Bureau of Environment
Division of Environmental Protection
Office of Air Quality
House Bill 2134, Section 64-3-1(h)

06/21/94 Filed Notice of Public Hearing with Secretary of State.

06/21/94 Initial Filing with Legislative Rule-Making Review Committee.

07/29/94 Held Public Hearing.

07/29/94 End of Public Comment Period.

08/12/94 Agency Approved Rule Filed with Secretary of State and Legislative
Rule-Making Review Committee.

11/13/94 Hearing Before the Legislative Rule-Making Review Committee.

11/13/94 Rule Approved by Legislative Rule-Making Review Committee with
Modifications.

11/14/94 Legislative Rule-Making Review Committee Recommends that the
Legislature Authorize the Agency to Promulgate 45CSR33 as Modified.

11/23/94 Modified Rule Filed with Secretary of State and Legislative Rule-Making
Review Committee.

03/10/95 Passed the West Virginia Legislature.

03/24/95 Approved by the Governor.

04/30/95 Rule Final Filed with Secretary of State.

05/01/95 Effective Date of Rule.

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

FILED

Nov 23 9 15 AM '64

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. - The Director has determined that a federal counterpart regulation exists, and in accordance with the Director's recommendation, with limited exceptions, this rule incorporates by reference (40 CFR Part 72).

§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 July 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)

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.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

March 29, 1995

Tammy Mowrer
DEP-Air Quality
1558 Washington St. E.
Charleston, WV 25311

HB 2134 authorizing, Title 45, Series 33, Acid rain provisions and permits, passed the Legislature on **March 10, 1995**. It is was signed by the Governor on March 24, 1995.

You have sixty (60) days after the Governor signs HB 2134, 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 2134** section 64-3-1(h). 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: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, 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 call our office.

Thank You
Administrative Law Division

45-33

Bill-DEP, Acid Rain

1512

1
2
3
4
5
6
7
8
9

H. B. 2151

(By Delegates Gallagher, Douglas, Compton,
Linch, Faircloth and Riggs)
(Introduced January 23, 1995 ; referred to the
Committee on the Judiciary .)

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

16 Be it enacted by the Legislature of West Virginia:

17 That chapter sixty-four of the code of West Virginia, one
18 thousand nine hundred thirty-one, as amended, be amended by
19 adding thereto a new article, designated article three-b, to read
20 as follows:

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

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

1 The legislative rules filed in the state register on the
2 twelfth day of August, one thousand nine hundred ninety-four,
3 modified by the division of environmental protection to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the twenty-third day of
6 November, one thousand nine hundred ninety-four, relating to the
7 division of environmental protection (acid rain provisions and
8 permits), are authorized.

9

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

13

14 This section is new; therefore, strike-throughs and
15 underscoring have been omitted.

SENATE BILL NO. 93

(By Senators Manchin, Anderson, Boley, Grubb and
Mcnaughtan)

[Introduced January 20, 1995; referred to the
Committee on Natural Resources; and then to
the Committee on the Judiciary]

1
2
3
4
5
6
7
8
9

45-33

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

16 Be it enacted by the Legislature of West Virginia:

17 That chapter sixty-four of the code of West Virginia, one
18 thousand nine hundred thirty-one, as amended, be amended by
19 adding thereto a new article, designated article three-b, to read
20 as follows:

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

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

1 The legislative rules filed in the state register on the
2 twelfth day of August, one thousand nine hundred ninety-four,
3 modified by the division of environmental protection to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the twenty-third day of
6 November, one thousand nine hundred ninety-four, relating to the
7 division of environmental protection (acid rain provisions and
8 permits), are authorized.

9

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

13

14 This section is new; therefore, strike-throughs and
15 underscoring have been omitted.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900



STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

FILED
WILLIAM H. HARRINGTON
Chief of Staff
JUDY COOPER
Director, Administrative Law
Aug 16 9 36 AM '95
PENNEY BARKER
Supervisor, Corporations

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
(Plus all the volunteer
help we can get)

TO: Tammy Mowrer

AGENCY: DEP-Air Quality

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: August 7, 1995

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: Tammy S. Mowrer

TITLE OF PERSON SIGNING: Administrative Secretary

DATE: August 15, 1995

* 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.