

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #6

Do Not Mark In This Box

FILED

MAY 1 3 35 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 33

TITLE OF RULE BEING AMENDED: "Acid Rain Provisions and Permits"

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

TITLE OF RULE BEING PROPOSED: _____

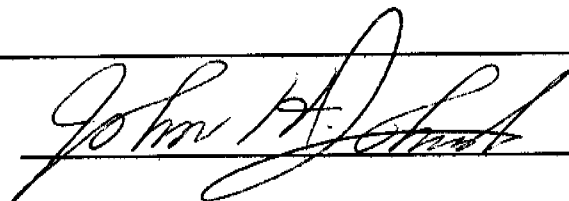
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) H. B. 4136

SECTION W. Va. Code §64-3-1, PASSED ON March 14, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: May 1, 1998



\$2.40



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

CECIL H. UNDERWOOD
GOVERNOR

May 1, 1998

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 that I am giving approval to file the above-referenced rule with your office as a final rule authorized by HB 4136, signed by Governor Underwood April 2, 1998.

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

Sincerely yours,


Michael P. Miano
Assistant Director

JEC:cc

Attachment

cc: Karen Watson, OAQ

LEGISLATIVE HISTORY ABSTRACT

45CSR33

ACID RAIN PROVISIONS AND PERMITS

Bureau of Environment
Division of Environmental Protection
Office of Air Quality
House Bill 4136 Section 64-3-1

- 06/17/97 Filed Notice of Public Hearing with Secretary of State.
- 06/17/97 Initial Filing with Legislative Rule-Making Review Committee.
- 07/21/97 Held Public Hearing.
- 07/21/97 End of Public Comment Period.
- 08/01/97 Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
- 11/18/97 Rule Approved by Legislative Rule-Making Review Committee.
- 03/14/98 Passed the West Virginia Legislature.
- 04/02/98 Approved by the Governor.
- 05/01/98 Rule Final Filed with Secretary of State.
- 05/01/98 Effective Date of Rule.

FILED

45CSR33

MAY 1 3 35 PM '98

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. -- May 1, 1998.

1.4. Effective Date. -- May 1, 1998.

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 the following provisions: 40 CFR Part 72, "Permits Regulation"; 40 CFR Part 74, "Sulfur Dioxide Opt-Ins"; 40 CFR Part 75, "Continuous Emissions Monitoring"; 40 CFR Part 76, "Nitrogen Oxides Reduction Program"; 40 CFR Part 77, "Excess Emissions"; and 40 CFR Part 78, "Appeals Procedure for Acid Rain Program"; as in effect on June 1, 1997.

§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 following provisions of the United States Environmental Protection Agency Acid Rain Program in effect on June 1, 1997: 40 CFR Part 72, "Permits Regulation", including all Subparts and Appendices; 40 CFR Part 74, "Sulfur Dioxide Opt-Ins", including all Subparts; 40 CFR Part 75, "Continuous Emissions Monitoring", including all Subparts and Appendices; 40 CFR Part 76, "Nitrogen Oxides Emissions Reduction Program", including all Appendices; 40 CFR Part 77, "Excess Emissions"; and 40 CFR Part 78, "Appeals Procedures for Acid Rain Program". These provisions are adopted 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.

4132

45-33

H. B. 4132

1 Bill-DEP, Acid

2 (By Delegates Hunt, Linch, Compton, Jenkins,

3 Faircloth and Riggs)

4 [Introduced January 30, 1998; referred to the

5 Committee on the Judiciary.]

6
7
8
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 a legislative rule relating
15 to 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.**

4132

1 (a) The legislative rule filed in the state register
2 on the thirtieth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section six,
4 article eighteen, chapter twenty-two of this code, relating
5 to the division of environmental protection (hazardous
6 waste management, 33 CSR 20), is authorized.

7 (b) The legislative rule filed in the state register
8 on the twenty-ninth day of August, one thousand nine
9 hundred ninety-six, authorized under the authority of
10 section four, article five, chapter twenty-two of this
11 code, relating to the division of environmental protection
12 (standards of performance for new stationary sources
13 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

14 (c) The legislative rule filed in the state register
15 on the twenty-ninth day of August, one thousand nine
16 hundred ninety-six, authorized under the authority of
17 section four, article five, chapter twenty-two of this
18 code, relating to the division of environmental protection
19 (emission standards for hazardous air pollutants pursuant
20 to 40 CFR Part 63, 45 CSR 34), is authorized.

21 (d) The legislative rule filed in the state register
22 on the twenty-eighth day of August, one thousand nine
23 hundred ninety-six, authorized under the authority of

1 section six, article seventeen, chapter twenty-two of this
2 code, modified by the division of environmental protection
3 to meet the objections of the legislative rule-making
4 review committee and refiled in the state register on the
5 twenty-second day of October, one thousand nine hundred
6 ninety-six, relating to the division of environmental
7 protection (underground storage tank insurance trust fund,
8 33 CSR 32), is authorized.

9 (e) The legislative rule filed in the state register
10 on the twenty-ninth day of August, one thousand nine
11 hundred ninety-six, authorized under the authority of
12 section three, article one, chapter twenty-two of this
13 code, modified by the division of environmental protection
14 to meet the objections of the legislative rule-making
15 review committee and refiled in the state register on the
16 twentieth day of December, one thousand nine hundred
17 ninety-six, relating to the division of environmental
18 protection (WV/NPDES regulations for coal mining
19 facilities, 47 CSR 30), is authorized.

20 (f) The legislative rule filed in the state register
21 on the thirtieth day of August, one thousand nine hundred
22 ninety-six, authorized under the authority of section four,
23 article three, chapter twenty-two of this code, modified by

1 the division of environmental protection to meet the
2 objections of the legislative rule-making review committee
3 and refiled in the state register on the twenty-first day
4 of February, one thousand nine hundred ninety-seven,
5 relating to the division of environmental protection
6 (surface mining and reclamation regulations, 33 CSR 2), is
7 authorized, with the following amendments:

8 "On page three, subsection 2.4, by striking out the
9 words "Coal seams commonly associated with such minerals
10 may include, but are not limited to Waynesburg, Washington,
11 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk
12 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Sheet and
13 Stockton-Bowling";

14 On page three, subsection 2.4, line eight, by striking
15 out the words "these seams are", and inserting in lieu
16 thereof the words "the seam is";

17 On page nine, subsection 2.13, line two, after the
18 word "highwall", by inserting the words "except in
19 operations where the entire upper horizon above the lowest
20 coal seam is proposed to be partly or entirely removed";

21 On page thirteen, subsection 2.55, line seven after
22 the "any", by inserting the word "substantial";

23 On page eighteen, subsection 2.103, line two, after

1 the word "stream." by adding the following: Examples
2 include wildlife ponds, settling basins and all ponds and
3 facilities or structures used for water treatment.;

4 On page nineteen, subsection 2.120, line three, by
5 striking the word "or" and inserting in lieu thereof the
6 word "and";

7 On page twenty-nine, subsection 3.2.e., after the word
8 "period" by striking the remainder of the subdivision
9 3.2.e.;

10 On page forty-nine, subsection 3.14.b.7., by striking
11 the entire paragraph;

12 On page forty-nine, subsection 3.14.b.8., by striking
13 the entire paragraph;

14 On page forty-nine, by renumbering the remaining
15 paragraphs;

16 On page fifty-one, subparagraph 3.14.b.14E, line one,
17 before the word "A", by inserting the words "If requested
18 by the Director";

19 On page fifty-one, subsection 3.14.b.15.B., by
20 striking the entire subparagraph, and inserting in lieu
21 thereof the following: 3.14.b.15.B. Surface water must be
22 diverted around or over the material by properly designed
23 and stabilized diversion channels which have been designed

1 using the best current technology to provide protection to
2 the environment or the health, welfare and safety of the
3 public. The channel shall be designed and constructed to
4 ensure stability of the remaining material, control
5 erosion, and minimize water infiltration into the remaining
6 material.;

7 On page seventy-two, subdivision 3.29.a, line five
8 after the word "IBR", by inserting the words "or where it
9 has been demonstrated to the satisfaction of the Director
10 that limited coal removal on areas immediately adjacent to
11 the existing permit is the only practical alternative to
12 recovery of unanticipated reserves or necessary to balance
13 reclamation efforts or environmental protection";

14 On page eighty-six, by inserting a new subsection 3.35
15 to read as follows: 3.35. All grade measurements and
16 linear measurements in this rule shall be subject to a
17 tolerance of two percent (2%). All angles in this rule
18 shall be measured from the horizontal and shall be subject
19 to a tolerance of five percent (5%): Provided, however,
20 this allowable deviation from the approved plan does not
21 affect storage capacity and/or performance standards.

22 On page one hundred eight, subdivision 5.5.c., line
23 two, after the word "landowner", by striking the remainder

1 of the paragraph and inserting in lieu thereof the words
2 "requesting the permanent structures be left for
3 recreational or wildlife propagation purposes or for any
4 beneficial uses to the landowner";

5 On page one hundred twelve, subdivision 6.5.a., line
6 five, after the word "Sunday." by adding the following:
7 *Provided, however,* the Director may grant approval of a
8 request for Sunday blasting if the operator demonstrates to
9 the satisfaction of the Director that the blasting is
10 necessary and there has been an opportunity for a public
11 hearing.;

12 On page one hundred twenty-six, paragraph 9.2.1.2,
13 after the word "achieved" by inserting: An alternate
14 maximum or minimum soil pH may be approved based on the
15 optimum pH for the revegetation species.;

16 On page one hundred thirty, line one, paragraph
17 9.3.h.1., by striking out the paragraph in its entirety,
18 and inserting in lieu thereof: 9.3.h.1. The minimum
19 stocking rate of commercial tree species shall be in
20 accordance with the approved forest management plan
21 prepared by a registered professional forester. In no case
22 may the rate be less than four hundred fifty (450) stems
23 per acre of commercial tree species;

1 On page one hundred thirty, paragraph 9.3.h.2., by
2 striking out the paragraph in its entirety, and by
3 renumbering the subsequent paragraphs;

4 On page one hundred thirty, in renumbered paragraph
5 9.3.h.2., after the word "than", by striking out the words
6 "four hundred fifty (450)", and inserting in lieu thereof
7 "three hundred (300)". On page one hundred thirty, in
8 renumbered paragraph 9.3.h.2., after the word "and", by
9 inserting the words "or the rate specified in the forest
10 management plan, whichever is greater,";

11 On page two hundred twenty-two, subdivision 14.11.e,
12 line 6, by striking out the word "operable" and by
13 inserting in lieu thereof "such condition that operations
14 could be resumed within sixty (60) days";

15 On page two hundred twenty-three, subdivision
16 14.11.f., line four, by striking out the word "operative",
17 and by inserting in lieu thereof the words "such condition
18 that the operations could be resumed within sixty (60)
19 days";

20 On page two hundred twenty-three, subdivision
21 14.11.f., line four, after the word "is", by inserting the
22 words "protected from unauthorized entry";

23 On page two hundred thirty-eight, subparagraph

1 14.15.b.6.A., line five, after the word "exceed", by
2 striking out the words "fifty (50) percent of the total
3 permit acreage, or four hundred (400) acres, whichever is
4 less, on operations which consist of at least three spreads
5 of equipment", and inserting in lieu thereof the words
6 "five hundred (500) acres on operations which consist of
7 multiple spreads of equipment";

8 On page two hundred thirty-nine, subsection 14.15.c.,
9 line three, after the word "regraded", by inserting the
10 words "and stabilized";

11 On page two hundred thirty-nine, subsection 14.15.c.,
12 line four, after the word "plan", by striking out the
13 "comma" and the remainder of the subparagraph, and
14 inserting in lieu thereof the words: The following shall
15 not be included in the calculation of disturbed area.;

16 On page two hundred forty, paragraph 14.15.c.2., line
17 seven, after the word "benches", by inserting the words
18 "without regard to like thickness";

19 On page two hundred forty, paragraph 14.15.c.5, line
20 two, after the word "graded", by inserting the words "with
21 material placed in a stable, controlled manner which will
22 not subsequently be moved".

23 (g) The legislative rule filed in the state register

1 on the twenty-ninth day of August, one thousand nine
2 hundred ninety-six, authorized under the authority of
3 section ten, 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 twenty-
7 sixth day of November, one thousand nine hundred
8 ninety-six, relating to the division of environmental
9 protection (confidential information, 45 CSR 311, is
10 authorized.

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

23 (i) The legislative rule filed in the state register

1 on the fifth day of February, one thousand nine hundred
2 ninety-seven, authorized under the authority of section
3 three, article twenty-two, 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 twenty-
7 fifth day of February, one thousand nine hundred
8 ninety-seven, relating to the division of environmental
9 protection (voluntary remediation and redevelopment, 60 CSR
10 3), is authorized.

11 (j) That title sixty, series one of the code of state
12 rules be amended by deleting the current interpretative
13 rule for the office of environmental advocate and inserting
14 in lieu thereof the following legislative rule, to read as
15 follows:

16 "§61-10-1. General.

17 1.1. Scope. - This legislative rule governs and
18 controls the appointment and qualifications of the position
19 of Environmental Advocate within the Division of
20 Environmental Protection.

21 1.2. Authority - West Virginia Code §22-1-3, 22-1-3a,
22 22-20.

23 1.3. Filing Date -

1 1.A. Effective Date - July 1, 1997.

2 561-15-2. Appointment, Salary and Qualifications.

3 2.1. Appointment. - The position of Environmental
4 Advocate will be a full-time position, will be appointed by
5 the Director, and will serve at the will and pleasure of
6 the Director of the Division of Environmental Protection in
7 accordance with the West Virginia Code §22-20-1.

8 2.2. Salary. - The salary of the position of
9 Environmental Advocate will be set by the Director and is
10 subject to future adjustments at the discretion of the
11 Director.

12 2.3. Qualifications. - The Director will receive or
13 solicit applications for the position of Environmental
14 Advocate from persons having the following minimum
15 qualifications:

16 2.3.a. A citizen and resident of the State of West
17 Virginia;

18 2.3.b. A graduate from an accredited college or
19 university with a four-year degree in a field of study
20 directly related to the qualifications, powers, and duties
21 of the position as set forth by the director.

22 2.3.c. A minimum of two years full-time or cumulative

1 experience in work directly related to environmental
2 protection, or other public service work or experience
3 which demonstrates the ability to carry out the powers and
4 duties of the position as set forth by the director.

5 2.3.d. A working familiarity with some of the legal
6 requirements and programmatic functions of the Division of
7 Environmental Protection.

8 2.3.e. A demonstrated ability to skillfully verbally
9 and by writing communicate in a public forum.

10 2.3.f. A demonstrated ability to use word processing
11 software for a computer and other necessary computer
12 skills as determined by the director.

13 2.3.g. A valid West Virginia driver's license.

14 §61-10-3. Powers and Limitations -

15 The Environmental Advocate will carry out the duties
16 of the position as set forth in this rule, and as
17 prescribed by the Director in accordance with the
18 following:

19 3.1. The Environmental Advocate will be guided in all
20 actions by the policy statement and the nine purposes set
21 forth in West Virginia Code §22-1-1 (b).

22 3.2. The Environmental Advocate may not in any
23 official capacity represent any person in, or file on

1 behalf of any person, legal or quasi-legal actions, whether
2 in support of or opposed to the Division of Environmental
3 Protection without the expressed approval of the Director,
4 and under supervision of the Division of Environmental
5 Protection's General Counsel.

6 3.3. The Environmental Advocate may not in any
7 official capacity organize public campaigns in support of,
8 or in opposition to official positions taken by the
9 Division of Environmental Protection on environmental
10 matters, and will not in any official capacity actively
11 participate in any such organized campaign."

12 (k) The director of the division of environmental
13 protection is hereby authorized to propose for promulgation
14 an emergency rule to amend a current legislative rule
15 relating to monitoring of air quality (to prevent and
16 control particulate air pollution from manufacturing
17 process operation, 45 CSR 7).

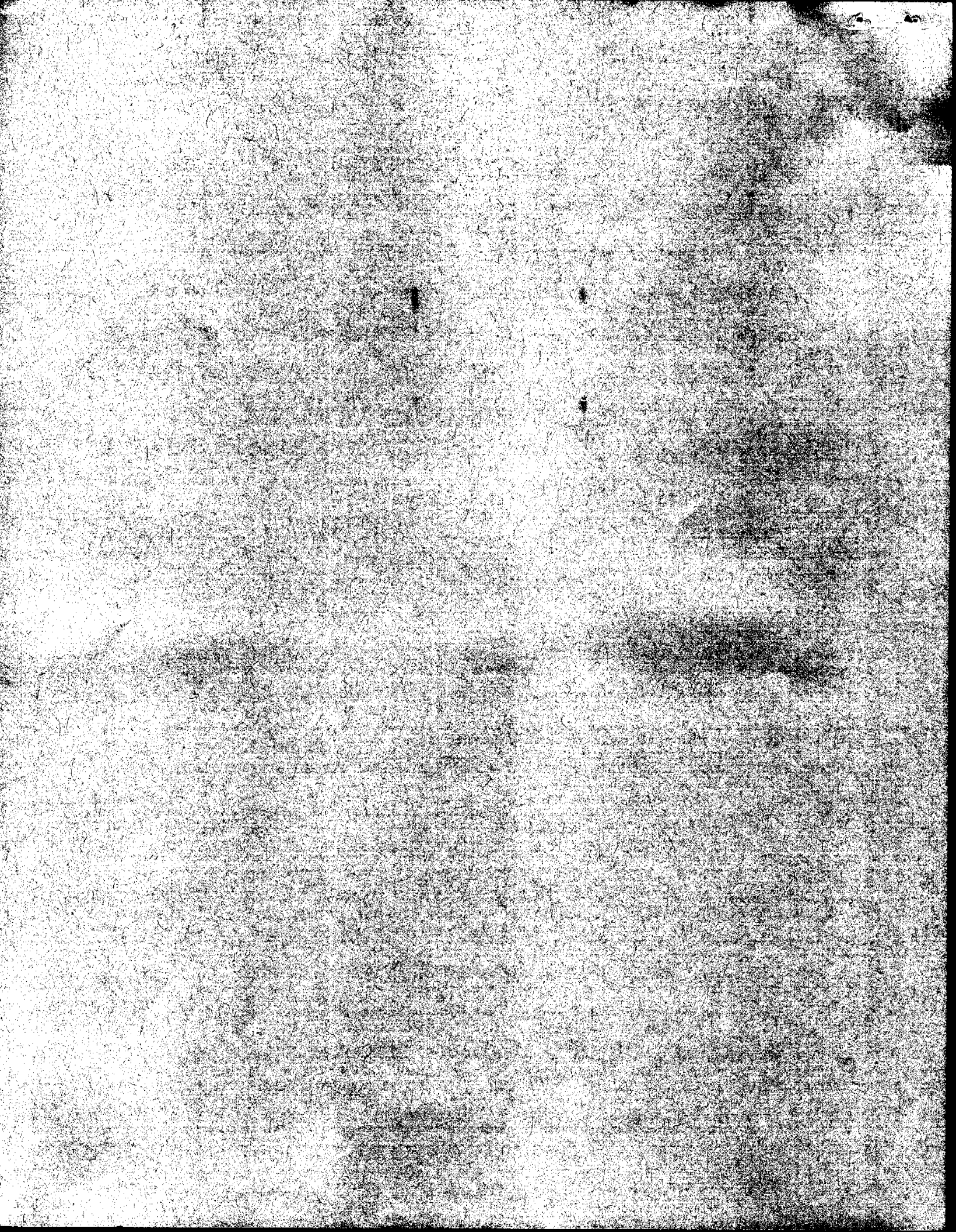
18 (l) The legislative rule filed in the state register
19 on the eighteenth day of March, one thousand nine hundred
20 ninety-seven, relating to the division of environmental
21 protection (yard waste composting, 47 CSR 322) is
22 authorized.

23 (m) The legislative rule filed in the state register

1 on the first day of August, one thousand nine hundred
2 ninety-seven, authorized under the authority of section
3 seven, article five, chapter twenty-two, of this code,
4 relating to the division of environmental protection (acid
5 rain provisions and permits, 45 CSR 33), is authorized.

6
7 NOTE: The purpose of this bill is to authorize the
8 Division of Environmental Protection to promulgate a
9 legislative rule relating to Acid Rain Provisions and
10 Permits.

11
12 , Strike-throughs indicate language that would be
13 stricken from the present law, and underscoring indicates
14 new language that would be added.



45-33

Senate Bill No. 281

1 (By Senator(s) Ross, Anderson, Bowman,
2 Macnaughtan, Boley and Buckalew)

3 [Introduced January 30, 1998; referred to the
4 Committee on Energy, Industry and Mining; and
5 then to the Committee on the Judiciary.]
6
7
8
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 a legislative rule relating
15 to 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.**

1 (a) The legislative rule filed in the state register
2 on the thirtieth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section six,
4 article eighteen, chapter twenty-two of this code, relating
5 to the division of environmental protection (hazardous
6 waste management, 33 CSR 20), is authorized.

7 (b) The legislative rule filed in the state register
8 on the twenty-ninth day of August, one thousand nine
9 hundred ninety-six, authorized under the authority of
10 section four, article five, chapter twenty-two of this
11 code, relating to the division of environmental protection
12 (standards of performance for new stationary sources
13 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

14 (c) The legislative rule filed in the state register
15 on the twenty-ninth day of August, one thousand nine
16 hundred ninety-six, authorized under the authority of
17 section four, article five, chapter twenty-two of this
18 code, relating to the division of environmental protection
19 (emission standards for hazardous air pollutants pursuant
20 to 40 CFR Part 63, 45 CSR 34), is authorized.

21 (d) The legislative rule filed in the state register
22 on the twenty-eighth day of August, one thousand nine
23 hundred ninety-six, authorized under the authority of

1 section six, article seventeen, chapter twenty-two of this
2 code, modified by the division of environmental protection
3 to meet the objections of the legislative rule-making
4 review committee and refiled in the state register on the
5 twenty-second day of October, one thousand nine hundred
6 ninety-six, relating to the division of environmental
7 protection (underground storage tank insurance trust fund,
8 33 CSR 32), is authorized.

9 (e) The legislative rule filed in the state register
10 on the twenty-ninth day of August, one thousand nine
11 hundred ninety-six, authorized under the authority of
12 section three, article one, chapter twenty-two of this
13 code, modified by the division of environmental protection
14 to meet the objections of the legislative rule-making
15 review committee and refiled in the state register on the
16 twentieth day of December, one thousand nine hundred
17 ninety-six, relating to the division of environmental
18 protection (WV/NPDES regulations for coal mining
19 facilities, 47 CSR 30), is authorized.

20 (f) The legislative rule filed in the state register
21 on the thirtieth day of August, one thousand nine hundred
22 ninety-six, authorized under the authority of section four,
23 article three, chapter twenty-two of this code, modified by

1 the division of environmental protection to meet the
2 objections of the legislative rule-making review committee
3 and refiled in the state register on the twenty-first day
4 of February, one thousand nine hundred ninety-seven,
5 relating to the division of environmental protection
6 (surface mining and reclamation regulations, 38 CSR 2), is
7 authorized, with the following amendments:

8 "On page three, subsection 2.4, by striking out the
9 words "Coal seams commonly associated with such minerals
10 may include, but are not limited to Waynesburg, Washington,
11 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk
12 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
13 Stockton Lewiston";

14 On page three, subsection 2.4, line eight, by striking
15 out the words "these seams are", and inserting in lieu
16 thereof the words "the seam is";

17 On page nine, subsection 2.43, line two, after the
18 word "highwall", by inserting the words "except in
19 operations where the entire upper horizon above the lowest
20 coal seam is proposed to be partly or entirely removed";

21 On page sixteen, subsection 2.95, line seven after
22 the "any", by inserting the word "substantial";

23 On page eighteen, subsection 2.108, line two, after

1 the word "stream." by adding the following: Examples
2 include wildlife ponds, settling basins and all ponds and
3 facilities or structures used for water treatment.;

4 On page nineteen, subsection 2.120, line three, by
5 striking the word "or" and inserting in lieu thereof the
6 word "and";

7 On page twenty-nine, subsection 3.2.e., after the word
8 "period" by striking the remainder of the subdivision
9 3.2.e.;

10 On page forty-nine, subsection 3.14.b.7., by striking
11 the entire paragraph;

12 On page forty-nine, subsection 3.14.b.8., by striking
13 the entire paragraph;

14 On page forty-nine, by renumbering the remaining
15 paragraphs;

16 On page fifty-one, subparagraph 3.14.b.14E, line one,
17 before the word "A", by inserting the words "If requested
18 by the Director";

19 On page fifty-one, subsection 3.14.b.15.B., by
20 striking the entire subparagraph, and inserting in lieu
21 thereof the following: 3.14.b.15.B. Surface water must be
22 diverted around or over the material by properly designed
23 and stabilized diversion channels which have been designed

1 using the best current technology to provide protection to
2 the environment or the health, welfare and safety of the
3 public. The channel shall be designed and constructed to
4 ensure stability of the remaining material, control
5 erosion, and minimize water infiltration into the remaining
6 material.;

7 On page seventy-two, subdivision 3.29.a, line five
8 after the word "IBR", by inserting the words "or where it
9 has been demonstrated to the satisfaction of the Director
10 that limited coal removal on areas immediately adjacent to
11 the existing permit is the only practical alternative to
12 recovery of unanticipated reserves or necessary to enhance
13 reclamation efforts or environmental protection";

14 On page eighty-six, by inserting a new subsection 3.35
15 to read as follows: 3.35. All grade measurements and
16 linear measurements in this rule shall be subject to a
17 tolerance of two percent (2%). All angles in this rule
18 shall be measured from the horizontal and shall be subject
19 to a tolerance of five percent (5%): *Provided, however,*
20 this allowable deviation from the approved plan does not
21 affect storage capacity and/or performance standards.

22 On page one hundred eight, subdivision 5.5.c., line
23 two, after the word "landowner", by striking the remainder

1 of the paragraph and inserting in lieu thereof the words
2 "requesting the permanent structures be left for
3 recreational or wildlife propagation purposes or for any
4 beneficial uses to the landowner";

5 On page one hundred twelve, subdivision 6.5.a., line
6 five, after the word "Sunday." by adding the following:
7 *Provided, however,* the Director may grant approval of a
8 request for Sunday blasting if the operator demonstrates to
9 the satisfaction of the Director that the blasting is
10 necessary and there has been an opportunity for a public
11 hearing.;

12 On page one hundred twenty-six, paragraph 9.2.i.2,
13 after the word "achieved" by inserting: An alternate
14 maximum or minimum soil pH may be approved based on the
15 optimum pH for the revegetation species.;

16 On page one hundred thirty, line one, paragraph
17 9.3.h.1., by striking out the paragraph in its entirety,
18 and inserting in lieu thereof: 9.3.h.1. The minimum
19 stocking rate of commercial tree species shall be in
20 accordance with the approved forest management plan
21 prepared by a registered professional forester. In no case
22 may the rate be less than four hundred fifty (450) stems
23 per acre of commercial tree species;

1 On page one hundred thirty, paragraph 9.3.h.2., by
2 striking out the paragraph in its entirety, and by
3 renumbering the subsequent paragraphs;

4 On page one hundred thirty, in renumbered paragraph
5 9.3.h.2., after the word "than", by striking out the words
6 "four hundred fifty (450)", and inserting in lieu thereof
7 "three hundred (300);" On page one hundred thirty, in
8 renumbered paragraph 9.3.h.2., after the word "acre", by
9 inserting the words "or the rate specified in the forest
10 management plan, whichever is greater,";

11 On page two hundred twenty-two, subdivision 14.11.e,
12 line 6, by striking out the word "operable" and by
13 inserting in lieu thereof "such condition that operations
14 could be resumed within sixty (60) days";

15 On page two hundred twenty-three, subdivision
16 14.11.f., line four, by striking out the word "operative",
17 and by inserting in lieu thereof the words "such condition
18 that the operations could be resumed within sixty (60)
19 days";

20 On page two hundred twenty-three, subdivision
21 14.11.f., line four, after the word "is", by inserting the
22 words "protected from unauthorized entry";

23 On page two hundred thirty-eight, subparagraph

1 14.15.b.6.A., line five, after the word "exceed", by
2 striking out the words "fifty (50) percent of the total
3 permit acreage, or four hundred (400) acres, whichever is
4 less, on operations which consist of at least three spreads
5 of equipment", and inserting in lieu thereof the words
6 "five hundred (500) acres on operations which consist of
7 multiple spreads of equipment";

8 On page two hundred thirty-nine, subsection 14.15.c.,
9 line three, after the word "regraded", by inserting the
10 words "and stabilized";

11 On page two hundred thirty-nine, subsection 14.15.c.,
12 line four, after the word "plan", by striking out the
13 "comma" and the remainder of the subparagraph, and
14 inserting in lieu thereof the words: The following shall
15 not be included in the calculation of disturbed area.;

16 On page two hundred forty, paragraph 14.15.c.2., line
17 seven, after the word "benches", by inserting the words
18 "without regard to like thickness";

19 On page two hundred forty, paragraph 14.15.c.5, line
20 two, after the word "graded", by inserting the words "with
21 material placed in a stable, controlled manner which will
22 not subsequently be moved".

23 (g) The legislative rule filed in the state register

1 on the twenty-ninth day of August, one thousand nine
2 hundred ninety-six, authorized under the authority of
3 section ten, 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 twenty-
7 sixth day of November, one thousand nine hundred
8 ninety-six, relating to the division of environmental
9 protection (confidential information, 45 CSR 31), is
10 authorized.

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

23 (i) The legislative rule filed in the state register

1 on the fifth day of February, one thousand nine hundred
2 ninety-seven, authorized under the authority of section
3 three, article twenty-two, 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 twenty-
7 fifth day of February, one thousand nine hundred
8 ninety-seven, relating to the division of environmental
9 protection (voluntary remediation and redevelopment, 60 CSR
10 3), is authorized.

11 (j) That title sixty, series one of the code of state
12 rules be amended by deleting the current interpretative
13 rule for the office of environmental advocate and inserting
14 in lieu thereof the following legislative rule, to read as
15 follows:

16 **"§61-10-1. General.**

17 **1.1. Scope.** - This legislative rule governs and
18 controls the appointment and qualifications of the position
19 of Environmental Advocate within the Division of
20 Environmental Protection.

21 **1.2. Authority** - West Virginia Code §22-1-3, 22-1-3a,
22 22-20.

23 **1.3. Filing Date** -

1 **1.4. Effective Date** - July 1, 1997.

2 **§61-10-2. Appointment, Salary and Qualifications.**

3 **2.1. Appointment.** - The position of Environmental
4 Advocate will be a full-time position, will be appointed by
5 the Director, and will serve at the will and pleasure of
6 the Director of the Division of Environmental Protection in
7 accordance with the West Virginia Code §22-20-1.

8 **2.2. Salary.** - The salary of the position of
9 Environmental Advocate will be set by the Director and is
10 subject to future adjustments at the discretion of the
11 Director.

12 **2.3. Qualifications.** - The Director will receive or
13 solicit applications for the position of Environmental
14 Advocate from persons having the following minimum
15 qualifications:

16 **2.3.a.** A citizen and resident of the State of West
17 Virginia.

18 **2.3.b.** A graduate from an accredited college or
19 university with a four-year degree in a field of study
20 directly related to the qualifications, powers, and duties
21 of the position as set forth by the director.

22 **2.3.c.** A minimum of two years full-time or cumulative

1 experience in work directly related to environmental
2 protection, or other public service work or experience
3 which demonstrates the ability to carry out the powers and
4 duties of the position as set forth by the director.

5 **2.3.d.** A working familiarity with some of the legal
6 requirements and programmatic functions of the Division of
7 Environmental Protection.

8 **2.3.e.** A demonstrated ability to skillfully verbally
9 and by writing communicate in a public forum.

10 **2.3.f.** A demonstrated ability to use word processing
11 software for a computer and other necessary computer
12 skills as determined by the director.

13 **2.3.g.** A valid West Virginia driver's license.

14 **§61-10-3. Powers and Limitations -**

15 The Environmental Advocate will carry out the duties
16 of the position as set forth in this rule, and as
17 prescribed by the Director in accordance with the
18 following:

19 **3.1.** The Environmental Advocate will be guided in all
20 actions by the policy statement and the nine purposes set
21 forth in West Virginia Code §22-1-1 (b).

22 **3.2.** The Environmental Advocate may not in any
23 official capacity represent any person in, or file on

1 behalf of any person, legal or quasi-legal actions, either
2 in support of or opposed to the Division of Environmental
3 Protection without the expressed approval of the Director,
4 and under supervision of the Division of Environmental
5 Protection's General Counsel.

6 3.3. The Environmental Advocate may not in any
7 official capacity organize public campaigns in support of,
8 or in opposition to official positions taken by the
9 Division of Environmental Protection on environmental
10 matters, and will not in any official capacity actively
11 participate in any such organized campaign."

12 (k) The director of the division of environmental
13 protection is hereby authorized to propose for promulgation
14 an emergency rule to amend a current legislative rule
15 relating to monitoring of air quality (to prevent and
16 control particulate air pollution from manufacturing
17 process operation, 45 CSR 7).

18 (l) The legislative rule filed in the state register
19 on the eighteenth day of March, one thousand nine hundred
20 ninety-seven, relating to the division of environmental
21 protection (yard waste composting, 47 CSR 38E) is
22 authorized.

23 (m) The legislative rule filed in the state register

1 on the first day of August, one thousand nine hundred
2 ninety-seven, authorized under the authority of section
3 seven, article five, chapter twenty-two, of this code,
4 relating to the division of environmental protection (acid
5 rain provisions and permits, 45 CSR 33), is authorized.

6

7 NOTE: The purpose of this bill is to authorize the
8 Division of Environmental Protection to promulgate a
9 legislative rule relating to Acid Rain Provisions and
10 Permits.

11

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