

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3

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JUL 27 3 02 PM '01

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV DEP - Division of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: W. Va. Code §22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

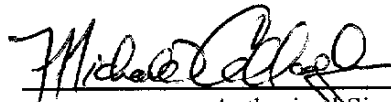
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 33

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 27, 2001

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

John A. Benedict, Deputy Director 7012 MacCorkle Avenue, SE Charleston, WV 25304	Cindy Lawson, Administrative Secretary 10 McJunkin Road Nitro, WV 25143-2506
--	--

Phone: (304) 926-3647 Fax: (304) 926-3637	Phone: (304) 759-0515 Fax: (304) 759-0526
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jbenedict@mail.dep.state.wv.us	clawson@mail.dep.state.wv.us
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- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

See "f" above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

RULE TITLE: 45CSR33 - "Acid Rain Provisions and Permits"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq.

B. SUMMARY OF RULE:

Title IV of the federal Clean Air Act, as amended, November 15, 1990, required each state to implement an operating permit system conforming to Title IV and Title V of the Clean Air Act as amended. West Virginia complied by enacting rule 45 CSR 33 "Acid Rain Provisions and Permits" which is an incorporation by reference of the federal counterpart regulation 40 CFR Part 72, and became effective May 1, 1994. The United States Environmental Protection Agency (USEPA) approved West Virginia's Acid Rain Program with its approval of West Virginia's Title V Operating Permit Program effective December 15, 1995. 45 CSR 33 was last amended in the 2000 legislative session to include all revisions and additions promulgated under 40 CFR Part 72 and related Parts between June 1998 and June 1999.

The revisions contained herein are intended to update 45 CSR 33 by incorporating all pertinent revisions and additions promulgated by the USEPA between June 1, 1999 and June 1, 2001 under the federal counterpart regulation 40 CFR Part 72 and related Parts.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Under the Acid Rain Program promulgated by the USEPA, 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. The Legislature has previously promulgated 45 CSR 33 pursuant to Title IV by incorporation by reference of a portion of the federal counterpart regulations. The purpose of this rule amendment is to update 45 CSR 33 to be consistent with all rules promulgated under the pertinent federal counterparts under the Clean Air Act, as amended.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

Briefing Document

Page 2

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division of Air Quality proposes that the rule incorporate by reference the federal counterparts.

Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its May 29, 2001 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. Their comments are contained in the attached minutes.

■
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR33 - "Acid Rain Provisions and Permits"

Type of Rule: Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & 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, originally promulgated by the 1994 Legislature, establishes general provisions and the operating permit program requirements for affected sources and affected units under the Acid Rain Program promulgated by the U. S. EPA under Title IV of the Clean Air Act, as amended. Rule 45CSR33 was enacted by incorporating the federal counterpart rule at 40 CFR Part 72 and related parts. These revisions are to incorporate appropriate federal revisions promulgated between June 1, 1999 and June 1, 2001.

Rule Title: 45CSR33 - "Acid Rain Provisions and Permits"

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

See section 2.

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: _____

Signature of Agency Head or Authorized Representative:

FILED

Jul 27 3 02 PM '01

TITLE 45
LEGISLATIVE RULE
~~DIVISION~~ DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE ~~DIVISION~~ OF AIR QUALITY

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~~ Secretary to adopt these standards by reference. It is also the intent of the ~~Director~~ Secretary 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 19, 2000.~~

1.4. Effective Date. -- ~~June 1, 2000.~~

1.5. Incorporation by Reference. -- Federal Counterpart Regulation. - The ~~Director~~ Secretary has determined that a federal counterpart regulation exists, and in accordance with the ~~Director's~~ Secretary'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"; and 40 CFR Part 77, "Excess Emissions"; effective ~~July 1, 1998~~ July 1, 2000, as amended by the Federal Register through ~~June 1, 1999~~ June 13, 2001.

1.6. Former Rules. -- This legislative rule amends 45CSR33 "Acid Rain Provisions and Permits" which was filed ~~May 20, 1999~~ May 19,

2000, and which became effective ~~June 1, 1999~~
June 1, 2000

§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 division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8. "Permitting Authority" shall mean the West Virginia Department of Environmental Protection.

3.3. "~~Permitting Authority~~" shall mean the West Virginia Division of Environmental Protection. "Secretary" shall mean the secretary of the department of environmental protection or such other person to whom the secretary has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

§45-33-4. Adoption of Standards.

4.1. The Secretary hereby adopts and incorporates by reference the following provisions of the United States Environmental Protection Agency Acid Rain Program effective ~~July 1, 1998~~ July 1, 2000, as amended by the Federal Register through ~~June 1, 1999~~ June 13, 2001: 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; and 40 CFR Part 77, "Excess Emissions". 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.

5.1. 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 Department 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.

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection

or copying where indicated under ADDRESSES.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T09-915 to read as follows:

§ 165.T09-915 Safety zone: Ottawa River, Toledo, Ohio.

(a) *Location.* All waters and the adjacent shoreline of the Ottawa River, Toledo, Ohio, bounded by the arc of a circle with a 560-foot radius with its center in approximate position 41° 43.21 N, 083° 28.46 W. (Southeast end of the Summit Street Bridge.) (NAD 1983).

(b) *Effective Period.* This regulation is effective from 6:30 p.m. until 11 p.m., June 23, 2001.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: May 30, 2001.

David L. Scott,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 01-14816 Filed 6-12-01; 8:45 am]

BILLING CODE 4910-15-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

Continuous Emissions Monitoring

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 72 to 80, revised as of July 1, 2000, part 75 is corrected in § 75.10 by adding paragraph (g), and in § 75.32 by adding a sentence to paragraph (a)(3) after the second sentence to read as follows:

§ 75.10 General operating requirements.

* * * * *

(g) *Minimum Recording and Reporting Requirements.* The owner or operator shall record and the designated representative shall report the hourly, daily, quarterly, and annual information collected under the requirements of this part as specified in subparts F and G of this part.

§ 75.32 Determination of monitor data availability for standard missing data procedures.

* * * * *

(a) * * *

(3) * * * For a unit that has accumulated less than 8,760 unit operating hours in the previous three years (26,280 clock hours), replace the words "during previous 8,760 unit operating hours" in Equation 9 with "in the previous three years" and replace "8,760" with "total unit operating hours in the previous three years".

* * * * *

[FR Doc. 01-55518 Filed 6-12-01; 8:45 am]
BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 1

[USCG 2001-8894]

RIN 2115-AG11

Right To Appeal; Director, Great Lakes Pilotage

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: The Coast Guard is amending its appellate procedures to provide explicit authority for appeal of decisions or actions taken by the Director, Great Lakes Pilotage. The Coast Guard has consistently applied those procedures whenever a decision or action taken by the Director has been appealed to higher

ORIGINAL

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 33 "ACID RAIN PROVISIONS AND PERMITS"

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Air Quality, Conference Room, 7012 MacCorkle Avenue, S.E., Charleston, West Virginia, commencing at 6:02 p.m., on the 12th day of July, 2001, pursuant to notice.

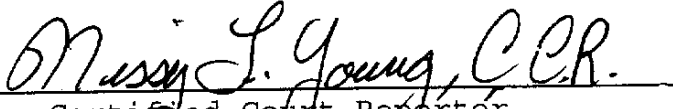


BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a
Certified Court Reporter and Commissioner within and for
the State of West Virginia, duly commissioned and
qualified, do hereby certify that the foregoing is, to the
best of my skill and ability, a true and accurate
transcript of all the proceedings had in the
aforementioned matter.

Given under my hand and official seal this
18th day of July, 2001.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.



Department of Environmental Protection
West Virginia

Public Hearing on Rules:
45 CSR1, 45CSR9, 45CSR9, 45CSR15,
45 CSR16, 45CSR18, 45CSR25, 45CSR26,
45 CSR33, 45 CSR34
DAQ, 7012 MacCorkle Ave. SE, Charleston
July 12, 2001 6P.M.

Sign-In

NAME	ADDRESS	ORGANIZATION	PHONE/FAX	E-MAIL	Comment	
					YES	NO
Tim Matken	301 Virginia St. Charleston WV	REP	304-348-4763 264-348-4715	cpm@vont.com cpf.com		✓
Kim Brown Poland	P.O. Box 1791 Charleston WV	WVMA	304/347-8348	KBP@ramkw.com		✓
DAVID M FLANNERY	PO Box 553 Charleston WV	WV Chamber	304/340-1017 304 340-1136	dauflannery@jacksonkelly.com		✓
Karen Watson	2012 MacCorkle Ave	DAQ	926-3743			
Jim Maser	2012 MacCorkle Ave	DAQ	926 3731			✓
Russ Lorince	7 Greenbrier St.	Allegheny Energy	345.4694	lorince@alleghenyenergy.com		✓



WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311

Telephone: (304) 342-2123

FAX: (304) 342-4552

wvma@wvma.com

July 12, 2001

John A. Benedict, Deputy Director
Division of Air Quality, DEP
7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

Re: Proposed Amendments to 45 CSR 8, 9, 15, 16, 25, 33 and
34 and Proposed Regulation 45 CSR 18.

Dear Deputy Director Benedict:

Please accept these comments by the WVMA on behalf of its several member companies which are directly affected by the above-referenced air regulations being amended or proposed. The WVMA offers these comments with the intention of ensuring that the subject air regulations are as clear as possible and, where such regulations incorporate provisions of federal regulations, that the most recent versions of such provisions are incorporated. Each regulation will be addressed in turn. Comments on proposed 45 CSR 1 amendments are being submitted separately.

The WVMA fully supports the update of Regulation 8, 45 CSR 8 "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter," and other above-referenced regulations to reflect the agency's new departmental designation. The WVMA also endorses the DAQ's decision not to adopt any changes to the PM10 standards at this time. The U.S. EPA is in the process of reconsidering its 1997 revisions to the PM standards following the recent American Trucking Association decision by the U.S. Supreme Court. The lower court has vacated the new particulate standards pending EPA's reconsideration of them, consistent with the Court's opinion, and we agree that West Virginia should not make any changes to the older PM10 standard at this time.

Regulation 9, 45 CSR 9 "Ambient Air Quality Standards for Carbon Monoxide and Ozone," is proposed for amendment to readopt the "old" one-hour ozone standard that EPA has

Board of Directors

Alliant Techsystems, Inc.
Ashland, Inc.
BASF Corporation
Bayer Corporation
Capitol Cement Corporation
Century Aluminum
Columbia Natural Resources

The Dean Company
Downard Hydraulics, Inc.
DuPont
Eagle Manufacturing Co.
Elkem Metals Company
Flexsys
FMC Corporation

GE Plastics
Halltown Paperboard Company
Inco Alloys International, Inc.
Kanawha Manufacturing Co.
Kingsford Manufacturing
Koppers Industries, Inc.
Marble King, Inc.

Mylan Pharmaceuticals, Inc.
NKG Spark Plug, Inc.
One Valley Bank
OSB Operations - Georgia-Pacific
PPG Industries
Quebecor Printing
Rhone-Poulenc Ag Company

Toyota
U.S. Silica Company
Union Carbide Corporation
W.M. Cramer Lumber Co.
Weirton Steel Corporation

"reinstated" following Court action which remanded the "new" 8-hour ozone standard to EPA for reconsideration. Although the U.S. Supreme Court upheld EPA's rulemaking powers as to this standard, the court challenge remains as to the reasonableness of the selected standard, and the Supreme Court rejected and remanded to EPA its implementation approach to the new standard. Accordingly, we agree with DAQ's approach in reinstating the prior 1-hour ozone standard until the issues are resolved on the Federal level.

Regulation 15, 45 CSR 15 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61," specifically incorporates "reference methods, performance specifications and other test methods" of 40 CFR Part 61 in section 4.1, but fails to specifically incorporate the accompanying federal definitions. The most obvious lacking definition is that for sources subject to the rule. The general requirement of 45 CSR 15, contained in Section 2.1, is a prohibition against constructing, modifying or operating any "National Emission Standards for Hazardous Air Pollutants (NESHAP) source" which results in a violation of the rule. There is no definition either in the state rule or Code of Federal Regulations for "National Emission Standards for Hazardous Air Pollutants (NESHAP) source." This phrase is apparently meant to include sources which are subject to NESHAPs, but as written, includes sources of the standards, rather than the emissions. We therefore recommend that "National Emission Standards for Hazardous Air Pollutants (NESHAP) source" be replaced with "hazardous air pollutant source" since "hazardous air pollutant" is defined in section 1.1. We also recommend that the lack of definitions be addressed on a broader scale by adding a provision similar to that of 45 CSR 18 Section 2.1 to read:

Definitions of all terms used, but not defined in this subsection shall have the meaning given to them in 40 CFR Part 61.02. Terms not defined therein shall have the meaning given to them in the federal Clean Air Act.

This provision would provide definitions of terms included in the incorporated reference methods, performance specifications and other test methods.

Section 2 of 45 CSR 16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR 60" like its counterpart provision in Regulation 15, identifies sources subject to the rule as "New Source Performance Standard source" without defining such sources. Likewise, Section 4.1 specifically includes reference methods, performance specifications and other test methods of the incorporated Federal regulations, but fails to specifically incorporate accompanying definitions. We therefore recommend that a provision similar to that of 45 CSR 18 Section 2.1 be added, to read:

John A. Benedict, Deputy Director
July 12, 2001
Page 3

Definitions of all terms used, but not defined in this subsection shall have the meaning given to them in 40 CFR Part 60. Terms not defined therein shall have the meaning given to them in the federal Clean Air Act.

This provision would provide definitions of terms included in the incorporated reference methods, performance specifications and other test methods.

Further, the date up to which federal regulations are incorporated should be extended to account for changes to the incorporated federal regulations which have occurred since June 1, 2001. Proposed Sections 1.5 and 4.1 of Regulation 16 incorporate that version of 40 CFR Part 60 which was effective July 1, 2000 and as amended by the Federal Register through June 1, 2001. On June 11, 2001, certain provisions of 40 CFR Part 60, dealing with the revised definition of "boiler operating day" and a requirement for substitution of missing data, were withdrawn. *See* 66 Fed. Reg. 31177 (June 11, 2001). We recommend that this Federal Register notice be included in the incorporated rule by changing Sections 1.5 and 4.4 to read:

... this rule incorporates by reference 40 CFR Parts 60 and 65 to the extent referenced in 40 CFR Part 60, effective July 1, 2000, as amended by the Federal Register through June 11, 2001.

(Emphasis added).

With respect to the newly proposed 45 CSR 18 "To Prevent and Control Emissions from Commercial and Industrial Solid Waste Incineration units," the definition for that waste subject to the rule, "commercial and industrial waste" should be clarified. Whether material qualifies as "commercial and industrial waste" depends upon (1) whether it is "solid waste" and (2) the manner in which it is incinerated (i.e., in an enclosed device using a controlled flame that is a distinct operating unit of the facility). Although the definition of "solid waste" contained in 40 CFR 60.2265 is incorporated by Section 2.1 of Regulation 18, for the sake of clarity, we recommend that the federal definition be restated in Section 2, for ease of reference by regulated sources.

WVMA would also like to suggest two administrative changes to Regulation 18. First, Section 2.1 contains some circular and superfluous language which should be eliminated. This Section provides that terms not defined in Regulation 18 shall have the meaning given to them in certain sections of the CFR, and where not defined in the CFR, shall have the meaning given to them by the Clean Air Act, certain other sections of the CFR or "this rule." The phrase "or this rule" should be deleted since one only looks to these other sources if "this rule" does not define the term. Second, a typographical error in Section 6.2 wherein the word "shall" appears twice should be eliminated.

John A. Benedict, Deputy Director
July 12, 2001
Page 4

The cut-off date for incorporation of Federal Registers should also be extended in **45 CSR 25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."** Section 1.5.a. of Regulation 25 incorporates those versions of Code of Federal Regulations provisions, including 40 CFR 264, contained in Table 25-A which were in effect as of July 1, 2000. On July 3, 2001, EPA took a direct final action which amended the applicability of Part 264. *See* 66 Fed. Reg. 35087 (July 3, 2001). We therefore recommend that Section 1.5.a. be amended to read "...that version which was in effect as of July 1, 2000, as amended by the Federal Register through July 3, 2001."

Two proposed rules which will amend 40 CFR Parts 264 and 40 CFR Parts 264, 265, 266, and 270, respectively were also published in the Federal Register on July 3, 2001. *See* 66 Fed. Reg. 35124 and 35126 (July 3, 2001).

Likewise, the cut-off date for incorporation of Federal Registers should be extended in **45 CSR 33 "Acid Rain Provisions and Permits."** Sections 1.5 and 4.1 of Regulation 33 incorporate those versions of certain provisions of the Code of Federal Regulations, including 40 CFR Part 75, which were effective July 1, 2000 and as amended by the Federal Register through June 1, 2001. On June 13, 2001, the EPA issued a Federal Register notice correcting the minimum recording and reporting requirements and the determination of monitor data availability for standard missing data procedures. *See* 66 Fed. Reg. 31842 (June 13, 2001). We recommend that this Federal Register notice be included in the incorporated rule by changing Sections 1.5 and 4.4 to read:

... this rule incorporates by reference... effective July 1, 2000, as amended by the Federal Register through **June 13, 2001.**

(Emphasis added).

Finally, **45 CSR 34 "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"** should be amended to incorporate three Federal Register changes made to 40 CFR Part 62 since June 1, 2001. Sections 1.5 and 4.1 of Regulation 34 incorporate those versions of 40 CFR Part 63 and Part 65, to the extent referenced in Part 63, which were effective on July 1, 2000 as amended by the Federal Register through June 1, 2001. Since then, Part 63 has undergone several regulatory changes:

- On May 14, the Notice of Intent to Comply provisions of 40 CFR Part 63 which had been vacated by the District of Columbia Circuit Court of Appeals in Chemical Manufacturers Ass'n v. EPA, 217 F.2d 861 (D.C.Cir. 2000) were officially removed from the CFR. *See* 66 Fed. Reg. 24270).

John A. Benedict, Deputy Director
July 12, 2001
Page 5

- On June 29, 2001, the EPA issued technical corrections to the NESHAP for Oil and Natural Gas Production Facilities and the NESHAP for Natural Gas Transmission and Storage Facilities which remove certain inconsistencies within the rule. *See* 66 Fed. Reg. 34548 (June 29, 2001).
- In addition, on July 3, 2001, the EPA issued a direct final rule amending certain subsections of Part 63 to improve implementation of emissions standards. *See* 66 Fed. Reg. 35087 (July 3, 2001).

These changes should be included in Regulation 34. We therefore recommend that this Federal Register notice be included in the incorporated rule by changing Sections 1.5 and 4.1 to read:

... this rule incorporates by reference 40 CFR Parts 63 and 65, to the extent referenced in 40 CFR Part 63, effective July 1, 2000, as amended by the Federal Register through July 3, 2001.

(Emphasis added). Two proposed rules which will amend 40 CFR Part 63 were also published in the Federal Register on July 3, 2001. *See* 66 Fed. Reg. 35124 and 35126 (July 3, 2001).

WVMA offers the same comment with respect to Regulation 34 as it offered above in its discussion of Regulations 15 and 16: that the universe of sources subject to the rule should be clarified and basic federal definitions accompanying incorporated federal provisions should specifically be included in order for the scope of the rules to be apparent on their face.

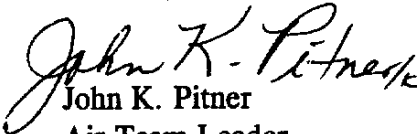
Finally, WVMA would like to offer the following suggestion with respect to the last "Inconsistency" section appearing in several of the above-referenced rules. This section provides that the Secretary is to make a determination as to which rule governs in the case of inconsistency of the subject rule with another rule of the Department of Environmental Protection, but that such determination should be based upon the application of the more stringent provision, term, condition, method or rule. We believe the better approach would be to reword this subsection to state that where an inconsistency exists, the more stringent provision, term, condition, method, or rule applies, except where the Secretary may determine otherwise on a case-by-case basis appropriate to the type and size of the regulated unit and its location. Such a change would give the Secretary discretion to apply the more appropriate standard, which is not necessarily the more stringent standard, in cases where an inconsistency arises, but good reasons exist not to apply the most stringent term.

The WVMA commends the Division of Air Quality on its annual efforts to update the subject regulations to reflect changes in counterpart federal regulations and to immediately

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reflect recent organizational changes within the Department of Environmental Protection. We appreciate the opportunity to comment on these rules and trust that our suggestions will be helpful in the process of finalizing these rules.

Sincerely,



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

cc: Karen S. Price, President, WVMA
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Mr. John Benedict
Deputy Director
Division of Air Quality
West Virginia Department of Environmental Protection
7012 MacCorkle Avenue S.E
Charleston, West Virginia 25304

Re: Proposed Regulatory Revisions.

Dear Mr. Benedict:

The following comments are offered on behalf of the West Virginia Chamber of Commerce in response to the proposed changes to the air quality regulatory program. These comments address the modifications to 45 CSR 1, 8, 9, 15, 16, 18, 25, 33, and 34. Separate, more detailed comments are being filed concerning 45 CSR 26.

1. 45 CSR 1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides." DAQ has proposed modification to the final compliance date from May 1, 2004 to May 31, 2004. This rule modification is dictated by the order of the United States Court of Appeals for the District of Columbia Circuit. This deadline creates an immediate question of how and when the NO_x SIP call ozone season budget allowances for West Virginia should be implemented since the NO_x SIP call seeks to have West Virginia demonstrate how it will meet an allocation that is applicable to a time period beginning on May 1 and ending September 30 of each year. The Chamber, however, supports the May 31, 2004 deadline as consistent with the Court ruling. This would result in a correct application of the Court opinion and this date is appropriate to allow sufficient time to install the control equipment that is necessary to comply with the significant emission reduction requirements of the regulation.

2. 45 CSR 8 - "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter." The modifications to this rule are designed to correct the reference to the PM 10 reference method. Since the new federal standard for PM 2.5 was remanded and the standard for PM 10 was vacated by the U.S. Court of Appeals for the District of Columbia Circuit, the West Virginia rule has been modified accordingly. The Chamber supports these modifications.

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3. 45 CSR 9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone." The modifications to this rule are designed to make the proposed revisions to the state rule for ozone consistent with the U.S. Court of Appeals for the District of Columbia Circuit ruling that remanded the 8-hour ozone standard. The Secretary proposes to adopt the 1-hour ozone standard and will defer adoption of the more stringent 8-hour ozone standard until implementation issues have been resolved by U.S. EPA and finally adjudicated. The Chamber supports these modifications.

4. 45 CSR 15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61." This proposed rule codifies procedures and emission standards for certain stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in section 61.01(a) of 40 CFR Part 61 (asbestos, benzene, beryllium, coke oven emissions, inorganic arsenic, mercury, radionuclides, and vinyl chloride). This revised rule incorporates by reference additional provisions relating to the Consolidated Federal Air Rule; Synthetic Organic Chemical Manufacturing Industry, and Amendments for Testing and Monitoring Provisions. The Chamber supports these modifications.

5. 45 CSR 16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60." This proposed rule adopts by reference the recently updated standards of performance for new stationary sources promulgated by U.S. EPA. The Chamber supports these modifications.

6. 45 CSR 18 - "To Prevent and Control Emissions From Commercial and Industrial Solid Waste Incineration Units." This new proposed rule and series incorporates the federal counterparts (40 CFR Part 60 Subparts CCCC and specified portions of DDDD) which established standards of performance for new stationary sources and guidelines for existing sources for commercial and industrial solid waste incineration units. The Chamber notes that the incorporation by reference is combined with additional regulatory provisions. The Chamber is only supportive of those air regulatory programs that are no more stringent than the federal program.

7. 45 CSR 25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities." The proposed revisions to this rule will update it by incorporating the federal counterpart regulation effective through May 14, 2001, which includes a federal regulation vacating the Notice of Intent to Comply provision for hazardous waste combustors. In addition, the proposed rule changes are required to maintain consistency with the current 45 CSR 20. The Chamber supports these modifications.

8. 45 CSR 33 - "Acid Rain Provisions and Permits." The proposed revisions to this rule are intended to update it by incorporating all pertinent revisions and additions promulgated by U.S. EPA under 40 CFR Part 72 and related parts. The Chamber supports these modifications.

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9. 45 CSR 34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63." The proposed revisions to this rule are intended to codify general procedures and emission standards for certain stationary sources that emit (or have the potential to emit) one or more of the substances listed as hazardous air pollutants in section 112(b) of the CAA. This rule incorporates by reference 40 CFR Part 63, EPA hazardous air pollutant standards. The Chamber supports these modifications.

Very truly yours.



David M. Flannery, Chairman
West Virginia Chamber Environmental Committee

cc: Stephen G. Roberts

45CSR33

ACID RAIN PROVISIONS AND PERMITS

RESPONSE TO COMMENTS

On June 6, 2001 the Division of Air Quality (DAQ) commenced the public comment period and subsequently held a public hearing on July 12, 2001 to accept oral comments on the proposed rule, 45CSR33. Written comments were accepted through 6:00 PM on Thursday, July 12, 2001. No person verbally commented at the public hearing concerning proposed rule 45CSR33. Two commenters submitted written comments which the DAQ addresses below.

I. COMMENTER: West Virginia Manufacturers Association

COMMENT A: *The commenter recommends that the rule include a recent federal regulation, adopted on June 13, 2001, which corrects the minimum recording and reporting requirements and the determination of monitor data availability for standard emission data procedures.*

RESPONSE A: DAQ agrees with the comment and will revise the rule accordingly.

II. COMMENTER: West Virginia Chamber of Commerce

COMMENT A: *The commenter supports the proposed revisions to the rule.*

RESPONSE A: No response required.