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OFFICE OF THE SECRETARY OF STATE

West Virginia Legislature
Legislative Rule-Making Review Committee

Room NB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vicki Douglas, Co-Chair

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Hickerson, Adm. Assistant

December 19, 1996

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. G. Dale Farley
Division of Environmental Protection
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Emission Standards for Hazardous Air Pollutants Pursuant to
40 CFR Part 63

The Legislative Rule-Making Review committee recommends that the West Virginia
Legislature:

- 1. Authorize the agency to promulgate part of the Legislative Rule
(a) as originally filed X
(b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule;
a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with
certain amendments; amendments and a statement of reasons for
such recommendation is attached
4. Authorize the agency to promulgate the Legislative rule as
modified with certain amendments; amendments and a statement
of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reason
for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State
Register and with the agency proposing the rule.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Division of Environmental Protection- Office of Air Quality

Subject: Emission Standards for Hazardous Air Pollutants
Pursuant to 40 CFR Part 63- 45CSR34

Counsel: JAA

PERTINENT DATES

Filed for public comment: July 10, 1996
Public comment period ended: August 29, 1996
Filed following public comment period: August 29, 1996
Filed LRMRC: August 29, 1996
Filed as emergency: n/a

Fiscal Impact: \$23,000.00 the first year, and \$25,000.00 per year thereafter. This cost is for 1/2 time of a full-time employee per year. This increase is the result of new enforcement responsibilities of the Office of Air Quality due to the changes to the CFR.

ABSTRACT

Brief Summary

This rule updates the state program for emission standards for hazardous air pollutants and other requirements pursuant to Section 112 of the Clean Air Act. The rule adopts a new incorporation date for the Code of Federal Regulations and adds several new CFR cites to the list of incorporated references.

Summary by Section

Section 1

Section 1.5 is amended to incorporate the new 40 CFR 63 effective date of June 15, 1996. This in effect incorporates new CFR provisions relating to the printing and publishing industry, gasoline distribution, ship building and repair, wood manufacturing, petroleum refineries, marine vessel loading operations, and aerospace manufacturing and reworking facilities.

Section 3

Section 3.2 adopts the new definition of "hazardous air pollutant" as established in §112 of the Clean Air Act.

Section 4

Section 4.1 incorporated the new effective date for Part 63 for the purposes of excepting the portions of the CFR which do not apply to West Virginia's approved program.

Section 5

Section 5.1 is amended by adding new sections of the CFR part 63 of the CFR which were inserted on June 15, 1996. Adding these sections to 5.1 clarify that "Administrator" refers to the EPA and not the state DEP. This is done in portions of the CFR where the program relates only to the EPA.

AUTHORITY

Statutory authority: W.Va. Code, §22-5-4(a)(4) provides:

The director is authorized...[t]o promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution....

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER

CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

7186

H. B. 2314

1 Bill-DEP, Emission Stds

2

(By Delegate(s) Douglas, Hunt, Compton,
Faircloth, Linch and Riggs)

3

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[Introduced March 3, 1997; referred to the
Committee on the Judiciary.]

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9

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate a legislative rule relating
15 to emission standards for hazardous air pollutants
16 pursuant to 40 CFR Part 63.

17 *Be it enacted by the Legislature of West Virginia:*

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

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

45-34

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

2 (a) The legislative rules rule filed in the state
3 register on ~~twenty-eighth~~ twenty-ninth day of ~~July~~ August,
4 one thousand nine hundred ~~ninety-five~~ ninety-six,
5 authorized under the authority of section four, article
6 five, chapter twenty-two of this code, relating to the
7 division of environmental protection (emission standards
8 for hazardous air pollutants pursuant to 40 CFR Part 63, 45
9 CSR 34), ~~are~~ is authorized.

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

22 (c) The legislative rules rule filed in the state
23 register on the ~~twenty-eighth~~ day of July, one thousand

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

6 (d) The legislative ~~rules~~ rule filed in the state
7 register on the thirty-first day of July, one thousand nine
8 hundred ninety-five, authorized under the authority of
9 section six, article seventeen, chapter twenty-two of this
10 code, modified by the division of environmental protection
11 to meet the objections of the legislative rule-making
12 review committee and refiled in the state register on the
13 eighteenth day of January, one thousand nine hundred
14 ninety-six, relating to the division of environmental
15 protection (underground storage tanks, 47 CSR 36), ~~are~~ is
16 authorized.

17 (e) The legislative ~~rules~~ rule filed in the state
18 register on the thirty-first day of July, one thousand nine
19 hundred ninety-five, authorized under the authority of
20 section six, article eighteen, chapter twenty-two of this
21 code, modified by the division of environmental protection
22 to meet the objections of the legislative rule-making
23 review committee and refiled in the state register on the

1 eighteenth day of January, one thousand nine hundred
2 ninety-six, relating to the division of environmental
3 protection (hazardous waste management regulations, 47 CSR
4 35), ~~are~~ is authorized.

5 (f) The legislative ~~rules~~ rule filed in the state
6 register on the thirty-first day of July, one thousand nine
7 hundred ninety-five, authorized under the authority of
8 section four, article three, chapter twenty-two of this
9 code, modified by the division of environmental protection
10 to meet the objections of the legislative rule-making
11 review committee and refiled in the state register on the
12 twenty-third day of January, one thousand nine hundred
13 ninety-six, relating to the division of environmental
14 protection (surface mining and reclamation regulations, 38
15 CSR 2), ~~are~~ is authorized with the following amendments:

16 "On page 64, section 3.27, after the word 'Director'
17 by striking out the word 'may' and inserting in lieu
18 thereof the word 'shall';

19 "On page 64, section 3.27, after the word 'completed'
20 by striking out the remainder of the first paragraph and
21 inserting in lieu thereof the following words:

22 'and reclamation activities are ongoing.'

23 On page 156, section 11.6(c)(6)(A) after the word

1 'operations' by striking out the words 'within five (5)
2 years of the date of SMA approval,';

3 On page 156, section 11.6(c)(6)(B) after the word
4 '(95-87)' by striking out the words 'within five (5) years
5 of the date of SMA approval,';

6 On page 157, section 11.6(c)(6)(C) after the word
7 'State' by striking out the words 'within five (5) years of
8 the date of SMA approval,';

9 On page 163, section 11.6(d)(6)(A), after the word
10 'applicant' by striking out the words 'within five (5)
11 years of the date of SMA approval,';

12 On page 164, section 11.6(d)(6)(B), after the word
13 '95-87' by striking out the words 'within five (5) years of
14 the date of SMA approval,';

15 On page 164, section 11.6(d)(6)(C), after the word
16 'wetlands' by striking out the words 'within five (5) years
17 of the date of SMA approval,';

18 On page 169, section 11.6(e)(5)(A), after the word
19 '95-87' by striking out the words 'within five (5) years of
20 the date of SMA approval,';

21 On page 169, section 11.6(e)(5)(B), after the word
22 'wetlands' by striking out the words 'within five (5) years
23 of the date of SMA approval,';

1 On page 175, section 11.6(f)(5)(A), after the word
2 '95-87', by striking out the words 'within five (5) years
3 of the date of SMA approval,';

4 On page 175, section 11.6(f)(5)(B), after the word
5 'enhancement' by striking out the words 'of wetlands within
6 five (5) years of the date of SMA approval,'.

7 On page 178, section 12.2 subsection (e) by striking
8 12.2(e) in its entirety and inserting in lieu thereof the
9 following:

10 'Notwithstanding any other provisions of this rule, no
11 bond release or reduction will be granted if, at the time,
12 water discharged from or affected by the operation requires
13 chemical treatment in order to comply with applicable
14 effluent limitations or water quality standards: Provided,
15 That the Director may approve a request for Phase I but not
16 Phase II or III, release if the applicant demonstrates to
17 the satisfaction of the Director that either:

18 (A) The remaining bond is adequate to assure long term
19 treatment of the drainage; or

20 (B) The operator has irrevocably committed other
21 financial resources which are adequate to assure long term
22 treatment of the drainage: Provided, That the alternate
23 financial resources must be in acceptable form, and meet

1 the standards set forth in Section 11 of the Act and
2 Section 11 of this rule: *Provided, however, That the*
3 *alternate financial arrangements shall provide a mechanism*
4 *whereby the Director can assume management of the resources*
5 *and treatment work in the event that the operator defaults*
6 *for any reason: And provided further, That default on a*
7 *treatment obligation under this paragraph shall be*
8 *considered equivalent to a bond forfeiture, and the*
9 *operator will be subject to penalties and sanctions,*
10 *including permit blocking, as if a bond forfeiture had*
11 *occurred.*

12 In order to make such demonstration as referenced
13 above, the applicant shall address, at a minimum, the
14 current and projected quantity and quality of drainage to
15 be treated, the anticipated duration of treatment, the
16 estimated capital and operating cost of the treatment
17 facility, and the calculations which demonstrate the
18 adequacy of the remaining bond or of the alternate
19 financial resources.'

20 On page sixteen, section 38-2-2.106, after the words
21 'sum of the loading' by inserting the words 'or driving';
22 and by striking out the words 'in a constructed valley
23 fill, backfill, dam, or refuse pile' and inserting in lieu

1 thereof the words 'as determined by acceptable engineering
2 practices';

3 On page twenty-eight, section 38-2-3.2(e), after the
4 words 'limited number of minor changes' by inserting the
5 words 'that do not significantly affect the health, safety
6 or welfare of the public and';

7 On page thirty-six, section 38-2-3.6(h) (5), after the
8 words 'as defined in' by striking out the words 'Article 5D
9 of Chapter 20' and inserting in lieu thereof the words
10 'Article 14 of Chapter 22';

11 On page thirty-nine, section 38-2-3.8(c), at the end
12 after the words 'reasonable time for compliance.', by
13 inserting a new sentence to read as follows: 'Provided,
14 That those structures and facilities, where it can be
15 demonstrated that reconstruction or revision would result
16 in greater environmental harm and the performance standards
17 set forth in the Act and these regulations can otherwise be
18 met, may be exempt from revision or reconstruction.';

19 On page one hundred seventy-eight, section 38-2-
20 12.2(d), after the words 'until all coal extraction
21 operations' by inserting the words 'for the permit or
22 increment thereof', and after the words 'the entire
23 disturbed area' by inserting the words 'for the permit or

1 increment thereof';

2 On page one hundred ninety-seven, section 38-2-
3 14.3(c)(2), after the words 'medium is the best' by
4 inserting the word 'reasonably';

5 And,

6 On page two hundred fifteen, section 38-2-14.14(e)(4),
7 by striking the sentence 'Runoff from areas above and
8 adjacent to the fill shall not be allowed to flow onto the
9 fill surface, and shall be diverted into stabilized
10 diversion channels, designed and constructed to safely pass
11 the peak runoff from a 100 year, 24 hour precipitation
12 event.' and inserting in lieu thereof the sentences
13 'Surface water runoff from areas above and adjacent to the
14 fill shall be diverted into properly designed and
15 constructed stabilized diversion channels which have been
16 designed using best current technology to safely pass the
17 peak runoff from a 100 year, 24 hour precipitation event.
18 The channel shall be designed and constructed to ensure
19 stability of the fill, control erosion, and minimize water
20 infiltration into the fill.'"

21 (g) The legislative ~~rules~~ rule filed in the state
22 register on the twenty-sixth day of July, one thousand nine
23 hundred ninety-five, authorized under the authority of

1 section four, article twenty-one, chapter twenty-two of
2 this code, modified by the division of environmental
3 protection to meet the objections of the legislative
4 rule-making review committee and refiled in the state
5 register on the fourteenth day of December, one thousand
6 nine hundred ninety-five, relating to the division of
7 environmental protection (coalbed methane wells, 38 CSR
8 23), ~~are~~ is authorized.

9 (h) The legislative ~~rules~~ rule filed in the state
10 register on the twenty-third day of November, one thousand
11 nine hundred ninety-four, authorized under the authority of
12 section eight, article eleven, chapter twenty of this code,
13 modified by the division of environmental protection to
14 meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the
16 twentieth day of December, one thousand nine hundred
17 ninety-five, relating to the division of environmental
18 protection (waste tire management, 47 CSR 38G), ~~are~~ is
19 authorized.

20 (i) The legislative ~~rules~~ rule filed in the state
21 register on the twenty-second day of June, one thousand
22 nine hundred ninety-five, authorized under the authority of
23 section twenty, article fifteen, chapter twenty-two of this

1 code, modified by the division of environmental protection
2 to meet the objections of the legislative rule-making
3 review committee and refiled in the state register on the
4 twenty-second day of December, one thousand nine hundred
5 ninety-five, relating to the division of environmental
6 protection (sewage sludge management, 47 CSR 38D), ~~are~~ is
7 authorized with the amendments set forth below:

8 On page seven, section 3.2.2, by striking out the
9 words "Table 3 of this rule will automatically be repealed
10 and replaced with Table 3A of this rule on December 31,
11 1997, unless this provision is modified prior to that
12 date.";

13 And,

14 On page seven, section 3.2.2, after the word "rule."
15 by inserting the following: The director is authorized
16 until Dec. 31, 1999, to issue variances to this section to
17 allow land application to soils which exceed the maximum
18 soil concentrations of metals listed in Table 3 where soil
19 analyses demonstrate that other soil factors, including,
20 but not limited to, soil pH, cation exchange capacity,
21 organic matter content, or clay content, will limit
22 mobility and availability of the metals. No later than
23 June 30, 1999, the director shall propose revisions to

1 Table 3 to adequately protect soil quality, human health
2 and the environment',

3 And,

4 On page 20, by striking the following from Table 3:
5 "NOTE: Table 3 of this rule will automatically be repealed
6 and replaced with Table 3A of this rule on December 31,
7 1997, unless the provision of paragraph 3.2.2 of this rule
8 is modified prior to that date.",

9 And,

10 On page 21, by striking out all of Table 3A.

11 (j) The legislative ~~rules~~ rule filed in the state
12 register on the thirty-first day of July, one thousand nine
13 hundred ninety-five, authorized under the authority of
14 section four, article five, chapter twenty-two of this
15 code, relating to the division of environmental protection
16 (to prevent and control of air pollution from the emission
17 of volatile organic compounds, 45 CSR 21), ~~are~~ is
18 authorized with the following amendment:

19 "On pages 170 and 171, by striking out section 40 in
20 its entirety and inserting in lieu thereof a new section
21 40, to read as follows:

22 §45-21-40. Other Facilities that Emit Volatile Organic
23 Compound (VOC).

1 40.1. Applicability.

2 a. This section 40. applies to any facility that has
3 aggregate maximum theoretical emissions of 90.7 megagrams
4 (mg) (100 tons) or more of volatile organic compounds
5 (VOCs) per calendar year in the absence of control devices;
6 provided that this section 40. applies to any source or
7 sources within such facility other than those sources
8 subject to regulation under sections 11. through 39. VOC
9 emissions from sources regulated under sections 11. through
10 39., but which fall below the applicability thresholds of
11 these sections, and thus are not subject to the emissions
12 control standards of these sections, shall be included in
13 the determination of maximum theoretical emissions for a
14 facility but shall not be subject to the requirements of
15 this section 40. Emissions from sources listed in section
16 40.1.d. shall not be included in the determination of
17 maximum theoretical emissions for a facility.

18 b. The owner or operator of a coating line or
19 operation, whose emissions are below this applicability
20 threshold, shall comply with the certification,
21 recordkeeping, and reporting requirements of section
22 40.6.a.

23 c. The owner or operator of a non-coating source,

1 whose emissions are below this applicability threshold,
2 shall comply with the certification, recordkeeping, and
3 reporting requirements of section 40.6.b.

4 d. The requirements of this section 40. shall not
5 apply to coke ovens (including by-product recovery plants),
6 fuel combustion sources, barge loading facilities, jet
7 engine test cells, vegetable oil processing facilities,
8 wastewater treatment facilities, iron and steel production,
9 surface impoundments, pits, and boilers, industrial
10 furnaces, and incinerators having a destruction efficiency
11 of 95 percent or greater.

12 e. The requirements of this section 40. shall not
13 apply to any facility bound by an order or permit,
14 enforceable by the Director, which limits the facility's
15 emissions to less than 100 tons of VOC per calendar year
16 without the application of control devices.

17 40.2. Definitions. -- As used in this section 40., all
18 terms not defined herein shall have the meaning given them
19 in section 2.

20 a. 'Reasonably available control measures' (also
21 denoted as RACM) means an emission limit or limits that
22 reflect the application of control technology and/or
23 abatement techniques or measures that are reasonably

1 available, considering technological and economic
2 feasibility. Such emission limits may be considered on a
3 plant-wide basis to achieve emission reduction requirements
4 in the most cost effective manner.

5 b. "Fugitive emissions" means those emissions which
6 could not reasonably pass through a stack, chimney, vent,
7 or other functionally equivalent opening.

8 40.3. Standards. -- The owner or operator of a
9 facility subject to this section 40. shall:

10 a. Except as provided in section 40.3.b.,

11 1. With respect to any existing non-fugitive
12 emission source which has maximum theoretical emissions of
13 6 pounds per hour or more, comply with an emission control
14 plan established on a case-by-case basis approved by the
15 Director that meets the definition of reasonably available
16 control measures (RACM) and achieves at least a 90 percent
17 reduction in emissions below the total (aggregate) maximum
18 theoretical emissions from all such non-fugitive emission
19 sources subject to RACM requirements; and

20 2. With respect to each process unit producing a
21 product or products, intermediate or final, in excess of
22 1000 megagrams (Mg) (1,100 tons) per year, regardless of
23 whether such product or products are listed in 40 CFR

1 60.489, comply with an emission control plan for fugitive
2 sources using the methods and criteria of section 37., or
3 alternative methods and criteria approved by the Director.
4 The Director may exempt a process unit from fugitive
5 emission control requirements upon satisfactory
6 demonstration that emissions are of minor significance.

7 b. With respect to such sources as described in
8 sections 40.3.a.1. and 40.3.a.2., comply with emission
9 limits and measures based upon an alternative emissions
10 reduction plan approved by the Director considering
11 technical, economic and air quality benefit considerations
12 that, at a minimum, maintains emission control measures
13 incorporated as part of any federally approved maintenance
14 plan for the county or area in which the source is located.

15 c. With respect to any source at a facility subject to
16 this section 40., which source has maximum theoretical
17 emissions of 6 pounds per hour or more and is constructed,
18 modified or begins operating after the effective date of
19 this rule, comply with a control plan developed on a case-
20 by-case basis approved by the Director that meets the
21 definition of reasonably available control technology
22 (RACT) in section 2.60. for both fugitive and non-
23 fugitive emission sources.

1 40.4. Submissions and Approval of Control Plans

2 a. Within 90 days after the effective date of this
3 rule, the owner or operator of a facility subject to this
4 section 40. shall submit any required amendments to the
5 case-by-case RACT control plans previously submitted to the
6 Director, that revise such control plans to meet the
7 definition of reasonably available control measures (RACM).

8 b. Notwithstanding the provisions of section 9.2.,
9 the owner or operator of a facility subject to this rule
10 solely due to this section 40., that requires a major
11 process change and/or major capital investment to comply
12 with RACM requirements, may petition the Director for an
13 additional extension beyond December 31, 1996, for
14 compliance certification, and the Director may grant such
15 extension when warranted. Provided however, such
16 compliance certification date shall be no later July 31,
17 1997.

18 c. The Director shall not approve a RACM plan or an
19 alternative emissions reduction plan under this section 40.
20 unless such plan includes:

21 1. A commitment to develop and submit a
22 complete RACT plan to the Director within 180 days of a
23 finding by the Director that a violation of the National

1 Ambient Air Quality Standard for ozone has occurred within
2 the county or maintenance area in which the source is
3 located; and

4 2. A commitment to achieving full
5 implementation of RACT within 2 years of approval of the
6 RACT plan by the Director.

7 d. A finding by the Director that a violation of
8 the National Ambient Air Quality Standard for ozone has
9 occurred shall be made based upon verification of a
10 monitored ozone standard violation in the county or
11 maintenance area in which the source is located. The three
12 maintenance areas (the Huntington area, comprising Cabell
13 and Wayne counties; the Charleston area, comprising Kanawha
14 and Putnam counties; and the Parkersburg area, comprising
15 Wood county) shall be treated separately and independently
16 for any such finding(s).

17 e. All RACM control plans, RACT control plans, and
18 alternative emissions reduction plans approved by the
19 Director pursuant to this section 40. shall be embodied in
20 a consent order or permit in accordance with 45CSR13 or
21 45CSR30, as required. A facility owner or operator may at
22 any time petition the Director to approve revisions to
23 these plans. The decision concerning said petition shall

1 be issued by the Director in accordance with 45CSR13 or
2 45CSR30, as required, or a consent order. Any such
3 revisions shall be subject to the public participation
4 requirements of 45CSR13 or 45CSR30.

5 f. The owner or operator of a facility subject to
6 this section 40. may submit for approval by the Director an
7 emission control plan that meets the definition of
8 reasonably available control technology (RACT) in section
9 2.60.

10 40.5. Test methods and procedures. -- The owner or
11 operator of any source subject to this section 40. shall
12 demonstrate compliance with section 40.3. by using the
13 applicable test methods specified in sections 41. through
14 46 or by other means approved by the Director.
15 Notwithstanding the requirements of section 41.1., EPA
16 approval for alternate test methods to demonstrate
17 compliance shall not be required for sources which are
18 subject solely to emission control requirements specified
19 in section 40.3.

20 40.6. Reporting and Recordkeeping Requirements for
21 Exempt Non-Control Technique Guideline (CTG) Sources.

22 a. An owner or operator of a coating line or
23 operation that is exempt from the emission limitations in

1 section 40.3. shall comply with the certification,
2 recordkeeping, and reporting requirements in section 4.2.

3 b. An owner or operator of a non-coating source
4 that is exempt from the emission limitations in section
5 40.3. shall submit, upon request by the Director, records
6 that document that the source is exempt from these
7 requirements.

8 1. These records shall be submitted to the
9 Director within 30 days from the date of request.

10 2. If such records are not made available, the
11 source will be considered subject to the limits in section
12 40.3.

13 40.7. Reporting and Recordkeeping Requirements for
14 Subject Non-CTG Coating Sources. -- An owner or operator of
15 a coating line or operation subject to this section 40. and
16 complying with section 40.3. shall comply with the
17 certification, recordkeeping, and reporting requirements in
18 section 4.

19 40.8. Reporting and Recordkeeping Requirements for
20 Subject Non-CTG, Non-Coating Sources.

21 a. The owner or operator of the subject VOC sources
22 shall perform all testing and maintain the results of all
23 tests and calculations required under sections 40.3. and

1 40.5. to demonstrate that the subject source is in
2 compliance.

3 b. The owner or operator of the subject VOC source
4 shall maintain these records in a readily accessible
5 location for a minimum of 3 years, and shall make these
6 records available to the Director upon verbal or written
7 request.

8 c. The owner or operator of any facility containing
9 sources subject to this section 40. shall comply with the
10 requirements in section 5. except that such requirements,
11 as they apply to sources solely subject to this section
12 40., may be modified by the Director upon petition by the
13 owner or operator. Any such modified requirements shall be
14 embodied in the facility's control plan (RACM, RACT or
15 alternative plan) and reflected in the associated consent
16 order or permit issued pursuant to 45CSR13 or 45CSR30."

17 (k) The legislative ~~rules~~ rule filed in the state
18 register on the twenty-seventh day of July, one thousand
19 nine hundred ninety-five, authorized under the authority of
20 section five, article twelve, chapter twenty-two of this
21 code, modified by the division of environmental protection
22 to meet the objections of the legislative rule-making
23 review committee and refiled in the state register on the

1 seventeenth day of January, one thousand nine hundred
2 ninety-six, relating to the division of environmental
3 protection (monitoring well design standards, 47 CSR 60),
4 are is authorized.

5 (1) The legislative ~~rules~~ rule filed in the state
6 register on the thirty-first day of July, one thousand nine
7 hundred ninety-five, authorized under the authority of
8 section five, article fifteen, chapter twenty-two of this
9 code, modified by the division of environmental protection
10 to meet the objections of the legislative rule-making
11 review committee and refiled in the state register on the
12 twenty-fourth day of January, one thousand nine hundred
13 ninety-six, relating to the division of environmental
14 protection (solid waste management, 47 CSR 38), are is
15 authorized with the following amendments:

16 "On page 37, subdivision 3.8.4, after the words 'from
17 the uppermost' by striking the word 'significant.'

18 On page 142, by striking the existing subdivision
19 4.11.2.c.A and inserting in lieu thereof the following:

20 '4.11.2.c.A.

21 The monitoring frequency for all constituents listed in
22 Appendix I of this rule, must be at least twice a year
23 during the active life of the facility, including closure

1 and the post-closure periods. The director may require
2 more frequent monitoring on a site-specific basis by
3 considering aquifer flow rate and existing quality of the
4 groundwater.'

5 On page 148, by striking the existing subdivision
6 4.11.3.i.A. and inserting in lieu thereof the following:

7 '4.11.3.i.A.

8 The director may consider an alternative groundwater
9 protection standard in consultation with the environmental
10 quality board pursuant to 47CSR57 for constituents for
11 which water quality standards have not been established.'

12 On page 151, subdivision 4.11.5., by following the
13 words 'any applicable groundwater quality protection
14 standards' by inserting the words 'and/or background
15 groundwater quality, pursuant to the requirements of the
16 Groundwater Protection Act, WVC §22-12-1 et seq.'

17 On page 152, subdivision 4.11.6.b.A., by following the
18 words 'Be protective of human health and the environment'
19 inserting the words 'and maintain existing groundwater
20 quality, pursuant to the requirements of the Groundwater
21 Protection Act, WVC §22-12-1 et seq.'

22 On page 154, subdivision 4.11.6.d.B.(f), by striking
23 the words 'Resource value of the aquifer' and inserting in

1 lieu thereof the words 'The hydrogeologic characteristics
2 of the facility and the surrounding land.'

3 On page 154, subdivision 4.11.6.d.B(f). (e) by striking
4 out the words "The hydrogeologic characteristics of the
5 facility and surrounding land);

6 And, by renumbering and relettering the remaining
7 subdivisions of the rule.

8 On page 156, subdivision 4.11.7.a.A., by following the
9 words 'Demonstrate compliance with' inserting the words
10 'the Groundwater Protection Act, WVC §22-12-1 et seq.,
11 and/or the'

12 And,

13 On page 173, subdivision 5.4.3, by adding the
14 following sentence to the end of the subdivision: "A class
15 D facility other than a class D-1 solid waste facility
16 shall not exceed two (2) acres in size."

17

18 NOTE: The purpose of this bill is to authorize the
19 Division of Environmental Protection to promulgate a
20 legislative rule relating to Emission Standards for
21 Hazardous Air Pollutants Pursuant to 40 CFR Part 63.

22

23 Strike-throughs indicate language that would be
24 stricken from the present law, and underscoring indicates
25 new language that would be added.

Senate Bill No. 168

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

3 [Introduced March 3, 1997; referred to the
4 Committee on Natural Resources; and then 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 emission standards for hazardous air pollutants
16 pursuant to 40 CFR Part 63.

17 *Be it enacted by the Legislature of West Virginia:*

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

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

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

2 (a) The legislative ~~rules~~ rule filed in the state
3 register on ~~twenty-eighth~~ twenty-ninth day of ~~July~~ August,
4 one thousand nine hundred ~~ninety-five~~ ninety-six,
5 authorized under the authority of section four, article
6 five, chapter twenty-two of this code, relating to the
7 division of environmental protection (emission standards
8 for hazardous air pollutants pursuant to 40 CFR Part 63, 45
9 CSR 34), ~~are~~ is authorized.

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

22 (c) The legislative ~~rules~~ rule filed in the state
23 register on the twenty-eighth day of July, one thousand

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

6 (d) The legislative ~~rules~~ rule filed in the state
7 register on the thirty-first day of July, one thousand nine
8 hundred ninety-five, authorized under the authority of
9 section six, article seventeen, chapter twenty-two of this
10 code, modified by the division of environmental protection
11 to meet the objections of the legislative rule-making
12 review committee and refiled in the state register on the
13 eighteenth day of January, one thousand nine hundred
14 ninety-six, relating to the division of environmental
15 protection (underground storage tanks, 47 CSR 36), ~~are~~ is
16 authorized.

17 (e) The legislative ~~rules~~ rule filed in the state
18 register on the thirty-first day of July, one thousand nine
19 hundred ninety-five, authorized under the authority of
20 section six, article eighteen, chapter twenty-two of this
21 code, modified by the division of environmental protection
22 to meet the objections of the legislative rule-making
23 review committee and refiled in the state register on the

1 eighteenth day of January, one thousand nine hundred
2 ninety-six, relating to the division of environmental
3 protection (hazardous waste management regulations, 47 CSR
4 35), ~~are~~ is authorized.

5 (f) The legislative ~~rules~~ rule filed in the state
6 register on the thirty-first day of July, one thousand nine
7 hundred ninety-five, authorized under the authority of
8 section four, article three, chapter twenty-two of this
9 code, modified by the division of environmental protection
10 to meet the objections of the legislative rule-making
11 review committee and refiled in the state register on the
12 twenty-third day of January, one thousand nine hundred
13 ninety-six, relating to the division of environmental
14 protection (surface mining and reclamation regulations, 38
15 CSR 2), ~~are~~ is authorized with the following amendments:

16 "On page 64, section 3.27, after the word 'Director'
17 by striking out the word 'may' and inserting in lieu
18 thereof the word 'shall';

19 On page 64, section 3.27, after the word 'completed'
20 by striking out the remainder of the first paragraph and
21 inserting in lieu thereof the following words:

22 'and reclamation activities are ongoing.'

23 On page 156, section 11.6(c)(6)(A) after the word

1 'operations' by striking out the words 'within five (5)
2 years of the date of SMA approval,';

3 On page 156, section 11.6(c)(6)(B) after the word
4 '(95-87)' by striking out the words 'within five (5) years
5 of the date of SMA approval,';

6 On page 157, section 11.6(c)(6)(C) after the word
7 'State' by striking out the words 'within five (5) years of
8 the date of SMA approval,';

9 On page 163, section 11.6(d)(6)(A), after the word
10 'applicant' by striking out the words 'within five (5)
11 years of the date of SMA approval,';

12 On page 164, section 11.6(d)(6)(B), after the word
13 '95-87' by striking out the words 'within five (5) years of
14 the date of SMA approval,';

15 On page 164, section 11.6(d)(6)(C), after the word
16 'wetlands' by striking out the words 'within five (5) years
17 of the date of SMA approval,';

18 On page 169, section 11.6(e)(5)(A), after the word
19 '95-87' by striking out the words 'within five (5) years of
20 the date of SMA approval,';

21 On page 169, section 11.6(e)(5)(B), after the word
22 'wetlands' by striking out the words 'within five (5) years
23 of the date of SMA approval,';

1 On page 175, section 11.6(f)(5)(A), after the word
2 '95-87', by striking out the words 'within five (5) years
3 of the date of SMA approval,';

4 On page 175, section 11.6(f)(5)(B), after the word
5 'enhancement' by striking out the words 'of wetlands within
6 five (5) years of the date of SMA approval,'.

7 On page 178, section 12.2 subsection (e) by striking
8 12.2.e in its entirety and inserting in lieu thereof the
9 following:

10 'Notwithstanding any other provisions of this rule, no
11 bond release or reduction will be granted if, at the time,
12 water discharged from or affected by the operation requires
13 chemical treatment in order to comply with applicable
14 effluent limitations or water quality standards: Provided,
15 That the Director may approve a request for Phase I but not
16 Phase II or III, release if the applicant demonstrates to
17 the satisfaction of the Director that either:

18 (A) The remaining bond is adequate to assure long term
19 treatment of the drainage; or

20 (B) The operator has irrevocably committed other
21 financial resources which are adequate to assure long term
22 treatment of the drainage: Provided, That the alternate
23 financial resources must be in acceptable form, and meet

1 the standards set forth in Section 11 of the Act and
2 Section 11 of this rule: *Provided, however, That the*
3 *alternate financial arrangements shall provide a mechanism*
4 *whereby the Director can assume management of the resources*
5 *and treatment work in the event that the operator defaults*
6 *for any reason: And provided further, That default on a*
7 *treatment obligation under this paragraph shall be*
8 *considered equivalent to a bond forfeiture, and the*
9 *operator will be subject to penalties and sanctions,*
10 *including permit blocking, as if a bond forfeiture had*
11 *occurred.*

12 In order to make such demonstration as referenced
13 above, the applicant shall address, at a minimum, the
14 current and projected quantity and quality of drainage to
15 be treated, the anticipated duration of treatment, the
16 estimated capital and operating cost of the treatment
17 facility, and the calculations which demonstrate the
18 adequacy of the remaining bond or of the alternate
19 financial resources.'

20 On page sixteen, section 38-2-2.106, after the words
21 'sum of the loading' by inserting the words 'or driving';
22 and by striking out the words 'in a constructed valley
23 fill, backfill, dam, or refuse pile' and inserting in lieu

1 thereof the words 'as determined by acceptable engineering
2 practices';

3 On page twenty-eight, section 38-2-3.2(e), after the
4 words 'limited number of minor changes' by inserting the
5 words 'that do not significantly affect the health, safety
6 or welfare of the public and';

7 On page thirty-six, section 38-2-3.6(h)(5), after the
8 words 'as defined in' by striking out the words 'Article 5D
9 of Chapter 20' and inserting in lieu thereof the words
10 'Article 14 of Chapter 22';

11 On page thirty-nine, section 38-2-3.8(c), at the end
12 after the words 'reasonable time for compliance.', by
13 inserting a new sentence to read as follows: 'Provided,
14 That those structures and facilities, where it can be
15 demonstrated that reconstruction or revision would result
16 in greater environmental harm and the performance standards
17 set forth in the Act and these regulations can otherwise be
18 met, may be exempt from revision or reconstruction.';

19 On page one hundred seventy-eight, section 38-2-
20 12.2(d), after the words 'until all coal extraction
21 operations' by inserting the words 'for the permit or
22 increment thereof', and after the words 'the entire
23 disturbed area' by inserting the words 'for the permit or

1 increment thereof';

2 On page one hundred ninety-seven, section 38-2-
3 14.3(c)(2), after the words 'medium is the best' by
4 inserting the word 'reasonably';

5 And,

6 On page two hundred fifteen, section 38-2-14.14(e)(4),
7 by striking the sentence 'Runoff from areas above and
8 adjacent to the fill shall not be allowed to flow onto the
9 fill surface, and shall be diverted into stabilized
10 diversion channels, designed and constructed to safely pass
11 the peak runoff from a 100 year, 24 hour precipitation
12 event.' and inserting in lieu thereof the sentences
13 'Surface water runoff from areas above and adjacent to the
14 fill shall be diverted into properly designed and
15 constructed stabilized diversion channels which have been
16 designed using best current technology to safely pass the
17 peak runoff from a 100 year, 24 hour precipitation event.
18 The channel shall be designed and constructed to ensure
19 stability of the fill, control erosion, and minimize water
20 infiltration into the fill.'"

21 (g) The legislative ~~rules~~ rule filed in the state
22 register on the twenty-sixth day of July, one thousand nine
23 hundred ninety-five, authorized under the authority of

1 section four, article twenty-one, chapter twenty-two of
2 this code, modified by the division of environmental
3 protection to meet the objections of the legislative
4 rule-making review committee and refiled in the state
5 register on the fourteenth day of December, one thousand
6 nine hundred ninety-five, relating to the division of
7 environmental protection (coalbed methane wells, 38 CSR
8 23), ~~are~~ is authorized.

9 (h) The legislative ~~rules~~ rule filed in the state
10 register on the twenty-third day of November, one thousand
11 nine hundred ninety-four, authorized under the authority of
12 section eight, article eleven, chapter twenty of this code,
13 modified by the division of environmental protection to
14 meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the
16 twentieth day of December, one thousand nine hundred
17 ninety-five, relating to the division of environmental
18 protection (waste tire management, 47 CSR 38G), ~~are~~ is
19 authorized.

20 (i) The legislative ~~rules~~ rule filed in the state
21 register on the twenty-second day of June, one thousand
22 nine hundred ninety-five, authorized under the authority of
23 section twenty, article fifteen, chapter twenty-two of this

1 code, modified by the division of environmental protection
2 to meet the objections of the legislative rule-making
3 review committee and refiled in the state register on the
4 twenty-second day of December, one thousand nine hundred
5 ninety-five, relating to the division of environmental
6 protection (sewage sludge management, 47 CSR 38D), ~~are~~ is
7 authorized with the amendments set forth below:

8 On page seven, section 3.2.2, by striking out the
9 words "Table 3 of this rule will automatically be repealed
10 and replaced with Table 3A of this rule on December 31,
11 1997, unless this provision is modified prior to that
12 date.";

13 And,

14 On page seven, section 3.2.2, after the word "rule."
15 by inserting the following: The director is authorized
16 until Dec. 31, 1999, to issue variances to this section to
17 allow land application to soils which exceed the maximum
18 soil concentrations of metals listed in Table 3 where soil
19 analyses demonstrate that other soil factors, including,
20 but not limited to, soil pH, cation exchange capacity,
21 organic matter content, or clay content, will limit
22 mobility and availability of the metals. No later than
23 June 30, 1999, the director shall propose revisions to

1 Table 3 to adequately protect soil quality, human health
2 and the environment',

3 And,

4 On page 20, by striking the following from Table 3:
5 "NOTE: Table 3 of this rule will automatically be repealed
6 and replaced with Table 3A of this rule on December 31,
7 1997, unless the provision of paragraph 3.2.2 of this rule
8 is modified prior to that date.",

9 And,

10 On page 21, by striking out all of Table 3A.

11 (j) The legislative ~~rules~~ rule filed in the state
12 register on the thirty-first day of July, one thousand nine
13 hundred ninety-five, authorized under the authority of
14 section four, article five, chapter twenty-two of this
15 code, relating to the division of environmental protection
16 (to prevent and control of air pollution from the emission
17 of volatile organic compounds, 45 CSR 21), ~~are~~ is
18 authorized with the following amendment:

19 "On pages 170 and 171, by striking out section 40 in
20 its entirety and inserting in lieu thereof a new section
21 40, to read as follows:

22 \$45-21-40. Other Facilities that Emit Volatile Organic
23 Compound (VOC).

1 40.1. Applicability.

2 a. This section 40. applies to any facility that has
3 aggregate maximum theoretical emissions of 90.7 megagrams
4 (mg) (100 tons) or more of volatile organic compounds
5 (VOCs) per calendar year in the absence of control devices;
6 provided that this section 40. applies to any source or
7 sources within such facility other than those sources
8 subject to regulation under sections 11. through 39. VOC
9 emissions from sources regulated under sections 11. through
10 39., but which fall below the applicability thresholds of
11 these sections, and thus are not subject to the emissions
12 control standards of these sections, shall be included in
13 the determination of maximum theoretical emissions for a
14 facility but shall not be subject to the requirements of
15 this section 40. Emissions from sources listed in section
16 40.1.d. shall not be included in the determination of
17 maximum theoretical emissions for a facility.

18 b. The owner or operator of a coating line or
19 operation, whose emissions are below this applicability
20 threshold, shall comply with the certification,
21 recordkeeping, and reporting requirements of section
22 40.6.a.

23 c. The owner or operator of a non-coating source,

1 whose emissions are below this applicability threshold,
2 shall comply with the certification, recordkeeping, and
3 reporting requirements of section 40.6.b.

4 d. The requirements of this section 40. shall not
5 apply to coke ovens (including by-product recovery plants),
6 fuel combustion sources, barge loading facilities, jet
7 engine test cells, vegetable oil processing facilities,
8 wastewater treatment facilities, iron and steel production,
9 surface impoundments, pits; and boilers, industrial
10 furnaces, and incinerators having a destruction efficiency
11 of 95 percent or greater.

12 e. The requirements of this section 40. shall not
13 apply to any facility bound by an order or permit,
14 enforceable by the Director, which limits the facility's
15 emissions to less than 100 tons of VOC per calendar year
16 without the application of control devices.

17 40.2. Definitions. -- As used in this section 40., all
18 terms not defined herein shall have the meaning given them
19 in section 2.

20 a. 'Reasonably available control measures' (also
21 denoted as RACM) means an emission limit or limits that
22 reflect the application of control technology and/or
23 abatement techniques or measures that are reasonably

1 available, considering technological and economic
2 feasibility. Such emission limits may be considered on a
3 plant-wide basis to achieve emission reduction requirements
4 in the most cost effective manner.

5 b. "Fugitive emissions" means those emissions which
6 could not reasonably pass through a stack, chimney, vent,
7 or other functionally equivalent opening.

8 40.3. Standards. -- The owner or operator of a
9 facility subject to this section 40. shall:

10 a. Except as provided in section 40.3.b.,

11 1. With respect to any existing non-fugitive
12 emission source which has maximum theoretical emissions of
13 6 pounds per hour or more, comply with an emission control
14 plan established on a case-by-case basis approved by the
15 Director that meets the definition of reasonably available
16 control measures (RACM) and achieves at least a 90 percent
17 reduction in emissions below the total (aggregate) maximum
18 theoretical emissions from all such non-fugitive emission
19 sources subject to RACM requirements; and

20 2. With respect to each process unit producing a
21 product or products, intermediate or final, in excess of
22 1000 megagrams (Mg) (1,100 tons) per year, regardless of
23 whether such product or products are listed in 40 CFR

1 60.489, comply with an emission control plan for fugitive
2 sources using the methods and criteria of section 37., or
3 alternative methods and criteria approved by the Director.
4 The Director may exempt a process unit from fugitive
5 emission control requirements upon satisfactory
6 demonstration that emissions are of minor significance.

7 b. With respect to such sources as described in
8 sections 40.3.a.1. and 40.3.a.2., comply with emission
9 limits and measures based upon an alternative emissions
10 reduction plan approved by the Director considering
11 technical, economic and air quality benefit considerations
12 that, at a minimum, maintains emission control measures
13 incorporated as part of any federally approved maintenance
14 plan for the county or area in which the source is located.

15 c. With respect to any source at a facility subject to
16 this section 40., which source has maximum theoretical
17 emissions of 6 pounds per hour or more and is constructed,
18 modified or begins operating after the effective date of
19 this rule, comply with a control plan developed on a case-
20 by-case basis approved by the Director that meets the
21 definition of reasonably available control technology
22 (RACT) in section 2.60. for both fugitive and non-
23 fugitive emission sources.

1 40.4. Submissions and Approval of Control Plans

2 a. Within 90 days after the effective date of this
3 rule, the owner or operator of a facility subject to this
4 section 40. shall submit any required amendments to the
5 case-by-case RACT control plans previously submitted to the
6 Director, that revise such control plans to meet the
7 definition of reasonably available control measures (RACM).

8 b. Notwithstanding the provisions of section 9.2.,
9 the owner or operator of a facility subject to this rule
10 solely due to this section 40., that requires a major
11 process change and/or major capital investment to comply
12 with RACM requirements, may petition the Director for an
13 additional extension beyond December 31, 1996, for
14 compliance certification, and the Director may grant such
15 extension when warranted. Provided however, such
16 compliance certification date shall be no later July 31,
17 1997.

18 c. The Director shall not approve a RACM plan or an
19 alternative emissions reduction plan under this section 40.
20 unless such plan includes:

21 1. A commitment to develop and submit a
22 complete RACT plan to the Director within 180 days of a
23 finding by the Director that a violation of the National

1 Ambient Air Quality Standard for ozone has occurred within
2 the county or maintenance area in which the source is
3 located; and

4 2. A commitment to achieving full
5 implementation of RACT within 2 years of approval of the
6 RACT plan by the Director.

7 d. A finding by the Director that a violation of
8 the National Ambient Air Quality Standard for ozone has
9 occurred shall be made based upon verification of a
10 monitored ozone standard violation in the county or
11 maintenance area in which the source is located. The three
12 maintenance areas (the Huntington area, comprising Cabell
13 and Wayne counties; the Charleston area, comprising Kanawha
14 and Putnam counties; and the Parkersburg area, comprising
15 Wood county) shall be treated separately and independently
16 for any such finding(s).

17 e. All RACM control plans, RACT control plans, and
18 alternative emissions reduction plans approved by the
19 Director pursuant to this section 40. shall be embodied in
20 a consent order or permit in accordance with 45CSR13 or
21 45CSR30, as required. A facility owner or operator may at
22 any time petition the Director to approve revisions to
23 these plans. The decision concerning said petition shall

1 be issued by the Director in accordance with 45CSR13 or
2 45CSR30, as required, or a consent order. Any such
3 revisions shall be subject to the public participation
4 requirements of 45CSR13 or 45CSR30.

5 f. The owner or operator of a facility subject to
6 this section 40. may submit for approval by the Director an
7 emission control plan that meets the definition of
8 reasonably available control technology (RACT) in section
9 2.60.

10 40.5. Test methods and procedures. -- The owner or
11 operator of any source subject to this section 40. shall
12 demonstrate compliance with section 40.3. by using the
13 applicable test methods specified in sections 41. through
14 46 or by other means approved by the Director.
15 Notwithstanding the requirements of section 41.1., EPA
16 approval for alternate test methods to demonstrate
17 compliance shall not be required for sources which are
18 subject solely to emission control requirements specified
19 in section 40.3.

20 40.6. Reporting and Recordkeeping Requirements for
21 Exempt Non-Control Technique Guideline (CTG) Sources.

22 a. An owner or operator of a coating line or
23 operation that is exempt from the emission limitations in

1 section 40.3. shall comply with the certification,
2 recordkeeping, and reporting requirements in section 4.2.

3 b. An owner or operator of a non-coating source
4 that is exempt from the emission limitations in section
5 40.3. shall submit, upon request by the Director, records
6 that document that the source is exempt from these
7 requirements.

8 1. These records shall be submitted to the
9 Director within 30 days from the date of request.

10 2. If such records are not made available, the
11 source will be considered subject to the limits in section
12 40.3.

13 40.7. Reporting and Recordkeeping Requirements for
14 Subject Non-CTG Coating Sources. -- An owner or operator of
15 a coating line or operation subject to this section 40. and
16 complying with section 40.3. shall comply with the
17 certification, recordkeeping, and reporting requirements in
18 section 4.

19 40.8. Reporting and Recordkeeping Requirements for
20 Subject Non-CTG, Non-Coating Sources.

21 a. The owner or operator of the subject VOC sources
22 shall perform all testing and maintain the results of all
23 tests and calculations required under sections 40.3. and

1 40.5. to demonstrate that the subject source is in
2 compliance:

3 b. The owner or operator of the subject VOC source
4 shall maintain these records in a readily accessible
5 location for a minimum of 3 years, and shall make these
6 records available to the Director upon verbal or written
7 request.

8 c. The owner or operator of any facility containing
9 sources subject to this section 40. shall comply with the
10 requirements in section 5. except that such requirements,
11 as they apply to sources solely subject to this section
12 40., may be modified by the Director upon petition by the
13 owner or operator. Any such modified requirements shall be
14 embodied in the facility's control plan (RACM, RACT or
15 alternative plan) and reflected in the associated consent
16 order or permit issued pursuant to 45CSR13 or 45CSR30."

17 (k) The legislative ~~rules~~ rule filed in the state
18 register on the twenty-seventh day of July, one thousand
19 nine hundred ninety-five, authorized under the authority of
20 section five, article twelve, chapter twenty-two of this
21 code, modified by the division of environmental protection
22 to meet the objections of the legislative rule-making
23 review committee and refiled in the state register on the

1 seventeenth day of January, one thousand nine hundred
2 ninety-six, relating to the division of environmental
3 protection (monitoring well design standards, 47 CSR 60),
4 ~~are~~ is authorized.

5 (1) The legislative ~~rules~~ rule filed in the state
6 register on the thirty-first day of July, one thousand nine
7 hundred ninety-five, authorized under the authority of
8 section five, article fifteen, chapter twenty-two of this
9 code, modified by the division of environmental protection
10 to meet the objections of the legislative rule-making
11 review committee and refiled in the state register on the
12 twenty-fourth day of January, one thousand nine hundred
13 ninety-six, relating to the division of environmental
14 protection (solid waste management, 47 CSR 38), ~~are~~ is
15 authorized with the following amendments:

16 "On page 37, subdivision 3.8.4, after the words 'from
17 the uppermost' by striking the word 'significant.'

18 On page 142, by striking the existing subdivision
19 4.11.2.c.A and inserting in lieu thereof the following:

20 '4.11.2.c.A

21 The monitoring frequency for all constituents listed in
22 Appendix I of this rule, must be at least twice a year
23 during the active life of the facility, including closure

1 and the post-closure periods. The director may require
2 more frequent monitoring on a site-specific basis by
3 considering aquifer flow rate and existing quality of the
4 groundwater.'

5 On page 148, by striking the existing subdivision
6 4.11.3.i.A. and inserting in lieu thereof the following:

7 '4.11.3.i.A.

8 The director may consider an alternative groundwater
9 protection standard in consultation with the environmental
10 quality board pursuant to 47CSR57 for constituents for
11 which water quality standards have not been established.'

12 On page 151, subdivision 4.11.5., by following the
13 words 'any applicable groundwater quality protection
14 standards' by inserting the words 'and/or background
15 groundwater quality, pursuant to the requirements of the
16 Groundwater Protection Act, WVC §22-12-1 et seq.'

17 On page 152, subdivision 4.11.6.b.A., by following the
18 words 'Be protective of human health and the environment'
19 inserting the words 'and maintain existing groundwater
20 quality, pursuant to the requirements of the Groundwater
21 Protection Act, WVC §22-12-1 et seq.'

22 On page 154, subdivision 4.11.6.d.B.(f), by striking
23 the words 'Resource value of the aquifer' and inserting in

1 lieu thereof the words 'The hydrogeologic characteristics
2 of the facility and the surrounding land,'

3 On page 154, subdivision 4.11.6.d.B(f).(e) by striking
4 out the words "The hydrogeologic characteristics of the
5 facility and surrounding land;

6 And, by renumbering and relettering the remaining
7 subdivisions of the rule.

8 On page 155, subdivision 4.11.7.a.A., by following the
9 words 'Demonstrate compliance with' inserting the words
10 'the Groundwater Protection Act, WVC §22-12-1 et seq.,
11 and/or the''

12 And,

13 On page 173, subdivision 5.4.3, by adding the
14 following sentence to the end of the subdivision: 'A class
15 D facility other than a class D-1 solid waste facility
16 shall not exceed two (2) acres in size.'"

17

18 NOTE: The purpose of this bill is to authorize the
19 Division of Environmental Protection to promulgate a
20 legislative rule relating to Emission Standards for
21 Hazardous Air Pollutants Pursuant to 40 CFR Part 63.

22

23 Strike-throughs indicate language that would be
24 stricken from the present law, and underscoring indicates
25 new language that would be added.