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(Plus all the volunteer  
help we can get)

March 12, 1996

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**HB 4224** authorizing, **Title 47, Series 38G, Waste Tire Management Rule** passed the Legislature on **March 9, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **HB 4224** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 4224 Section 64-3-1(h)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

**\*\*\*IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,  
Administrative Law Division



**DIVISION OF ENVIRONMENTAL PROTECTION**

GASTON CAPERTON  
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1356 Hansford Street  
Charleston, WV 25301-1401

LAIDLEY ELI McCOY, Ph.D.  
DIRECTOR

April 16, 1996

*Waste Tire Management Rule  
(Title 47, Series 38G)*

*Filing History*

October 5, 1994	Proposed Rule was filed with the Secretary of State.
November 10, 1994	Public Hearing was held on proposed rule.
November 23, 1994	Agency-Approved Rule filed with the Legislative Rule Making Review Committee.
December 12, 1995	Legislative Rule Making Review Committee approves the rule with modifications.
December 20, 1995	Modified Rule filed with the Secretary of State.
March 9, 1996	HB 4224 is approved by the full Legislature. Section 64-3-1(h) of that Bill adopts the rule.

TITLE 47  
LEGISLATIVE RULES  
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 38G  
WASTE TIRE MANAGEMENT RULE  
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TITLE 47  
LEGISLATIVE RULES  
DIVISION OF ENVIRONMENTAL PROTECTION

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 38G  
WASTE TIRE MANAGEMENT RULE

47-38G-1. GENERAL.

1.1. PURPOSE, SCOPE AND APPLICABILITY.

1.1.1. Purpose. This rule is intended to meet the requirements of Chapter 20, Article 11, Section 8(c), as amended. That section directed the division of environmental protection to promulgate rules in accordance with the solid waste management board plan established under Chapter 20, Article 11, Section 8(b) to properly handle and manage waste tires and used tires.

1.1.2. Scope. This legislative rule establishes requirements for the proper handling and management of waste tires and used tires including permitting and reporting procedures pertaining to any facility or activity that generates, processes, or otherwise reuses or recycles tires by whatever means.

1.1.3. Applicability. This rule applies to any person or persons who manage, collect, store, transport, recycle, process, dispose or otherwise handles waste tires and used tires after June 1, 1996 in the State of West Virginia, except as provided in section 3.1 of this rule.

1.2. AUTHORITY: West Virginia Code §22-1-3, §22-1-3a, §20-11-8(c).

1.3. LEGISLATIVE MANDATE: Effective June 1, 1996, it will be unlawful to deposit tires in a solid waste facility in West Virginia: Provided, however, That reasonable and necessary exceptions to such prohibition may be, and are, included in this rule (West Virginia Code §20-11-8{a}).

1.4. FILING DATE: April 17, 1996

1.5. EFFECTIVE DATE: June 2, 1996

1.6. INCORPORATION BY REFERENCE. Whenever state statutes or rules are incorporated into this rule by reference, the reference is to the statute or rule in effect on the effective date of this rule.

#### 47-38G-2. DEFINITIONS.

The following definitions specifically apply to this rule and are listed accordingly. All other definitions unique to W. Va. Code §22-15-2 and 47 CSR 38 are fully incorporated into this rule by reference;

2.1. "Access Road" means all roads providing access to a solid waste facility from a road that is under federal, state, or local authority, or internal roads providing access from one portion of the facility to another.

2.2. "Automobile Dealer" means any business engaged in the sale of new automobiles, trucks or motorized recreational vehicles in the State of West Virginia.

2.3. "Bond" means any performance bond or other form of financial assurance provided by W. Va. Code §22-15-11 and the solid waste management regulations (47 CSR 38).

2.4. "Chief" means the chief of the office of waste management of the West Virginia division of environmental protection or his authorized representative.

2.5. "Department of Transportation Symbol" means the identification number placed on new tires mandated by the Federal Motor Vehicle Safety Standards for motor vehicles and motor vehicle equipment pursuant to Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended.

2.6. "D.O.T. Regulated Tire" means any tire that was originally used for those purposes defined under "tire" or "used tire" or meets the definition of "waste tire" that is identified with a Department of Transportation Symbol.

2.7. "Sale and/or Selling" includes exchange, consignment, barter, gift, and offer for sale. Sale and/or selling includes the removal of tires from a stock of merchandise by a wholesale

distributor, or a retail tire dealer, for its own use.

2.8. "Shredded Waste Tires" means tires or tire derived material, which has been processed by shredding to particle sizes not greater than 72 square inches, or approximately 6 inches by 12 inches.

2.9. "Storage Cell" means a dedicated area for long term storage for waste tires or tire derived material located within an approved solid waste disposal facility for the purpose of long term storage for the eventual retrieval for marketing purposes.

2.10 "Tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle and may include the following types of tires: passenger car tires, light- and heavy-duty truck tires, high speed industrial tires, bus tires, and special service tires (including military, off-the-road, recreational/all terrain vehicle, and slow speed industrial).

2.11. "Tire Dealer" means any person or persons engaged in the business of selling tires to an end user in the State of West Virginia.

2.12. "Tire Derived Material" means any shredded, chipped, crumb rubber or other such tire material that has been processed from a tire, used tire or waste tire.

2.13. "Used Tire" means any tire that was originally used for the purposes defined under "tires", but has sufficient tread life or can be recapped for marketability to be safely reused for those same purposes.

2.14. "Vector" means any insect, rodent, or other organism capable of directly or indirectly transmitting infectious diseases or pathogenic organisms from one person to another or from an animal to a person.

2.15. "Waste Tire Chips" means tires or tire derived materials that have been reduced to particle sizes not greater than 2 inches by 2 inches.

2.16. "Waste Tire" means any tire that was originally used

for those purposes defined under "tire", or "used tire" and which has been discarded or is not suitable for its original intended purpose: Provided, That a tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not considered to be a waste tire.

2.17. "Waste Tire Hauler" means any person or persons who collects waste tires from a tire dealer or other sources and transports waste tires in this state, but shall not include a person or persons who haul waste tires generated by their own business activity, persons hauling their own tires, or where the hauling of waste tires to a solid waste facility is incidental to business activities. Provided that: a waste tire hauler must be a certificated motor carrier regulated by the WV public service commission to lawfully transport waste tires.

2.18. "Waste Tire Monofill" means an approved solid waste facility where waste tires are placed for the purpose of long term storage for eventual retrieval for marketing purposes, provided that, they are not mixed with any other solid waste.

2.19. "Waste Tire Processing Facility or Activity" means a solid waste facility or activity who accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cutting, splitting, shredding, quartering, grinding, etc. or otherwise breaking down waste tires for the purpose of disposal, reuse, recycling and/or marketing. ----

2.20. "Wholesale Distributor" means a person or persons who distribute tires to tire dealers in this state or to its own retail establishments in this state.

#### 47-38G-3. WASTE TIRE MANAGEMENT AND PERMITTING REQUIREMENTS.

##### 3.1. APPLICABILITY.

3.1.1. Regulated Facilities and Activities. This rule applies to any person or persons who generate, collect, transport, store, process, reuse, dispose, or otherwise manage

waste tires and used tires after June 1, 1996, in the State of West Virginia.

3.1.2. Penalties. Any person who willfully or negligently violates the provisions of the "Solid Waste Management Act"; Chapter 22, Article 15, or any permit or order issued pursuant to Article 15 or rule pursuant to 47 CSR 38G is subject to the same criminal penalties as set forth in Chapter 22, Article 11, Section 24.

3.1.3. Reasonable and Necessary Exceptions to Prohibiting Tire Material from Disposal in Landfills. Reasonable and necessary exceptions to the prohibition of depositing waste tires in a solid waste facility, which will occur on June 1, 1996 are provided and allowed by Chapter 20, Article 11, Section 8(a). These exceptions include:

3.1.3.a. Waste Tire Monofills. Monofills offer the advantage of providing a long term storage site for waste tires or tire derived material, while minimizing the risk of vector attraction, fire and leachate generation until such time that markets are further developed for reuse and recycling.

3.1.3.b. Alternative Daily Cover. Tire derived material may be substituted for daily cover material at solid waste facilities not to exceed an application frequency of two consecutive days: Provided, however, that the substitution for daily cover material shall be exempt from the monthly tonnage limits imposed on landfills.

3.1.3.c. Reuse as Select Waste. Tire derived material may be beneficially reused as a substitute material for the first eight (8) feet of select solid waste by being placed on the protective cover of the composite liner system and shall be exempt from the state solid waste assessment fee and monthly tonnage limit imposed on landfills when beneficially reused for this purpose: Provided, however, that the permittee is required to keep daily logs and include in the monthly tonnage report the amount (tonnage) of tire derived material beneficially reused for this purpose.

3.1.4. Prohibitions. Temporary containment or long term storage of waste tires is prohibited and is deemed unlawful

disposal and shall constitute an open dump, unless such temporary containment or long term storage is conducted in strict accordance with the provisions of this rule.

### 3.2. PERMITS REQUIRED.

3.2.1. **Waste Tire Monofill and Waste Tire Processing Facility.** A permit must be obtained from the chief prior to the installation, establishment, construction or operation of a waste tire monofill or waste tire processing facility. Provided that, a portable tire grinder or shredding machine shall not constitute a waste tire processing facility, unless determined otherwise by the chief.

3.2.1.a. **Waste Tire Processing Activity.** A permittee of an approved solid waste facility may apply to the chief for a minor permit modification to conduct waste tire processing activities at the facility: Provided, That such activities fully comply with this rule.

3.2.1.b. **Waste Tire Monofill Storage Cell.** A permittee of an approved solid waste facility may apply to the chief for a minor permit modification to install and operate a designated storage cell for the placement of waste tires and/or tire derived material at the facility: Provided, That the designated storage cell is located at least two hundred (200) feet from all solid waste disposal cells and fully comply with this rule.

3.2.2. **Exceptions to Permits Required.** Waste tires or tire derived material that is used as an alternative or supplemental fuel shall not require a solid waste facility permit or be regulated under this rule: Provided, That the facility utilizing such material is permitted and regulated by the office of air quality within the division of environmental protection or other state regulatory agency.

3.2.2.a. **Use of Waste Tires as a Raw Material Feedstock.** A facility or pilot project which utilizes waste tires as raw material feedstock in a process such as pyrolysis, cryogenics, (chemical/thermal) or high pressure waterjetting to break down waste tires into their respective constituents of crumb rubber, polyester or nylon fiber, steel belts and other

constituents not herein specified to develop new and/or recyclable materials shall not require a solid waste facility permit or be regulated under this rule: Provided, That the facility is permitted and regulated including the handling, storage, and stockpiling of waste tires consistent with this rule by the office of air quality, office of water resources or other appropriate state regulatory agency. Additionally, the chief may allow pilot or test projects using the latest best available technology in his or her determination that a permit is not required.

**3.2.2.b. Beneficial Applications for Waste Tires.**

Whole waste tires or tire derived material which are reused in the application of constructing retaining walls, rebuilding highway shoulders and subbase, building highway crash attenuation barriers, feedhoppers or watering troughs for livestock, playground equipment, boat or truck dock construction, house or building construction, go-cart/motorbike or race track barriers, or other beneficial applications not herein specified, shall not require a solid waste facility permit or be regulated under this rule: Provided, That waste tires may not be reused as fencing, as erosion control structures, along stream banks or river banks or reused in any manner where human health or the environment, as determined by the chief, is put at risk. The chief shall have the authority to determine if an unreasonable number of waste tires are being stored for an unreasonable length of time for beneficial application and may take enforcement action including the removal of said tires.

**3.3. PERMIT APPLICATION REQUIREMENTS.**

**3.3.1. Regulatory Requirements.** Unless otherwise approved by the chief in writing, all applicants for a waste tire monofill/storage cell or waste tire processing facility permit/activity shall comply with the permit application requirements of 47 CSR 38 Section 3.7, as applicable, and the following additional requirements:

**3.3.2. Projected Maximum Quantity/Tonnage Information.** The proposed annual quantity/tonnage of waste tires and tire derived material to be received, processed and stored at the processing facility/activity shall be stated in the application. The maximum quantity/tonnage received, processed and stored at

any given time, may not exceed a projected (quarterly) three month supply. However, if the applicant can verify a market or an end use for the tire derived material by copies of signed contractual agreements, the applicant may be eligible, if approved by the chief in writing, to receive, process and store at any given time, up to a six month supply: Provided, That no more waste tires and tire derived material shall be received at the facility until the previous maximum quantity/tonnage allowed by the chief to be received, processed and stored has been removed from the facility for marketing.

**3.3.3. Market Analysis Information.** A market analysis relating to waste tires and tire derived material shall be provided by the applicant including:

**3.3.3.a. Identification of Potential and Verified Markets.** A listing of specific information utilized by the applicant to identify potential and verified markets for the material to be received and processed at the facility shall be provided. Data supplied must also include any material quality requirements of the potential market contacts, market pricing structures, as available and applicable; and the identification of marketing services available for assistance in product quality or material preparation and transportation.

**3.3.4. Flow Diagram.** The applicant shall provide a flow diagram along with a narrative description of the operation and activities involving the flow of the waste tires from their receipt, processing into tire derived material, storage and transport to market (end use). There must be sufficient explanation in the flow diagram and narrative descriptions to explain the complete flow of the proposed facility's operation and activities.

**3.3.5. Emergency Response Plan.** An emergency response plan must be included in the application that includes, at a minimum, the following:

**3.3.5.a. Notification Procedures.** A notification procedure to summon emergency assistance from the local police departments, fire departments, Division of Environmental Protection and state or local emergency response teams. This procedure must be posted at the facility's office in a

conspicuous location and at the main entrance gate visible and legible to the public.

3.3.5.b. Fire Plan. The application shall include a written fire plan with a description of the procedures to be implemented, detailed map depicting location of existing and/or proposed fire hydrants, water supply lines, fire extinguishers or fire ponds if no fire hydrants are to be included in the facility operation or activity and any other proposed fire control equipment. The fire plan must be designed to effectively control a worst case scenario tire fire which could occur at the facility.

#### 3.4. PERMIT APPLICATION FEES.

3.4.1. Amount. The application fees are two thousand five hundred dollars (\$2,500) for a waste tire processing facility and three thousand dollars (\$3,000) for a waste tire monofill and one thousand dollars (\$1,000) for a waste tire processing activity or waste tire monofill storage cell.

3.4.2. Incomplete Application Fee. The division of environmental protection may require an additional fee of ten percent (10%) of the applicable application fee for any application refiled due to deficiency or incompleteness.

#### 3.5. MINIMUM DESIGN AND CONSTRUCTION REQUIREMENTS FOR A WASTE TIRE PROCESSING FACILITY OR ACTIVITY.

3.5.1. Perimeter Security. A waste tire processing facility or activity must be secured and enclosed within a minimum six (6) foot high woven wire or chain link perimeter fence with a lockable entrance gate and an emergency exit gate at another location.

3.5.2. Grade. No portion of the surface of the ground on which waste tires or tire derived material is stored may be less than two percent or greater than eight percent in grade.

3.5.3. Access Roads. All access roads including fire lanes/fire breaks and the buffer zone must be designed and constructed for all weather conditions with proper storm drainage provisions.

3.5.4. **Access Flow and Restrictions.** The facility shall be designed in a manner that restricts unauthorized access. Signs shall be posted at the main entrance gate that direct persons entering the facility during regular business hours to report to the site office.

3.5.5. **Storage Plan for Waste Tire and Tire Derived Material.** The storage plan must address the receiving and handling of waste tires and tire derived material at, to and from the facility. The plan must address the following items at a minimum:

3.5.5.a. **Storage Requirements.** The facility or activity must be designed to receive, process and store a quantity/tonnage of waste tires and tire derived material in accordance with the provisions of section 3.3.2 of this rule. Include in the application, the calculations necessary for determining the quantity/tonnage.

3.5.5.b. **Other Solid Waste Materials.** All miscellaneous solid waste materials generated as a result of operations must be properly disposed at an approved solid waste facility within one week after being received and/or generated at the facility;

3.5.5.c. **Size Restriction on Storage Piles.** Piles of whole waste tires or tire derived material must not exceed fifteen (15) feet in height, one hundred (100) feet in length and fifty (50) feet in width at the base.

3.5.5.d. **Location of Storage Piles.** Waste tire and tire derived material storage piles at the proposed facility or activity must be shown on a map in sufficient detail including the length, width and height of each storage pile and the location and dimensions of all fire lanes/fire breaks and buffer zones.

3.5.5.e. **Spacing of Storage Piles (Fire Lane/Fire Break).** Waste tire and tire derived material storage piles must have a minimum fire lane/fire break spacing of fifty (50) feet between piles at the base and fifty (50) feet from buildings or other structures at the base. Fire lanes/fire breaks must be maintained free of any obstructions at all times so that

emergency fire fighting equipment will always have access in the event of an incident.

3.5.5.f. **Buffer Zone.** A buffer zone of fifty (50) feet wide minimum shall be provided between the perimeter fence and any storage piles. The buffer zone must be kept clear of weeds, trees, vegetation, debris or other materials that may restrict access to all portions of the facility by emergency fire fighting equipment.

3.5.6. **Vector Control Plan.** A vector control plan shall be submitted that includes the following:

3.5.6.a. **Methods of Vector Control.** A description of how storage piles and any fire pond impoundment will be maintained to prevent and/or control mosquito breeding and harborage of disease carrying vectors. Methods of acceptable vector control may include, but are not limited to, the following:

3.5.6.a.A. **Covering of Storage Pile.** Covering by plastic sheets or other impermeable barriers, other than soil, to prevent the accumulation of precipitation in whole tires;

3.5.6.a.B. **Chemical Treatment.** Chemical treatment to eliminate harborage or breeding may be utilized, provided, That any chemical treatment program utilized as part of the vector control plan must be approved by the West Virginia department of agriculture.

### 3.6. MINIMUM DESIGN AND CONSTRUCTION REQUIREMENTS FOR A WASTE TIRE MONOFILL OR STORAGE CELL.

3.6.1. Unless otherwise approved by the chief in writing, the following specific requirements must be followed in designing and constructing a waste tire monofill or storage cell.

3.6.1.a. **Liner System.** A liner system shall consist of the following elements:

3.6.1.a.A. **Subbase;**

3.6.1.a.B. Compacted soil liner; and

3.6.1.a.C. Leachate collection and protective cover zone.

3.6.1.a.D. Daily Q.A./Q.C. reports in accordance with 47 CSR 38 section 4.5.5.b.I. as applicable, shall be prepared and maintained in a bound log book at the site in regard to liner system construction.

3.6.1.b. The subbase portion of the liner system shall consist of a cleared and grubbed natural ground surface capable of supporting the entire liner system.

3.6.1.c. The compacted soil liner shall:

3.6.1.c.A. Be a minimum compacted thickness of one (1) foot;

3.6.1.c.B. Be compacted in six (6) inch lifts;

3.6.1.c.C. Be no more permeable than  $1 \times 10^{-6}$  cm/sec based on laboratory and field testing;

3.6.1.c.D. Be free of particles greater than two (2) inches in any dimension;

3.6.1.c.E. Be placed without damaging the subbase;

3.6.1.c.F. Be placed during a period of time when both the air temperature and the soil temperature are above freezing so that neither the compacted soil nor the subbase are frozen;

3.6.1.c.G. Have a slope of at least two percent (2%) to facilitate the drainage of any leachate across the liner surface; and

3.6.1.c.H. Be designed, operated, and maintained so that the physical and chemical characteristics of the liner and its ability to restrict the flow of constituents,

or leachate is not adversely affected by the leachate.

3.6.1.c.I. The construction of the compacted soil liner shall be certified by a WV registered professional engineer and a Q.A./Q.C. report shall be submitted to the chief prior to the placement of the leachate collection and protective cover zone.

3.6.1.d. The leachate collection and protective cover zone shall:

3.6.1.d.A. Create a flow zone between the compacted soil liner and waste tires and/or tire derived material more permeable than  $1 \times 10^{-3}$  cm/sec based on laboratory and field testing. The leachate collection zone including the piping system must be designed and placed on a minimum slope of two percent (2%) to facilitate efficient leachate drainage and prevent ponding on the compacted soil liner;

3.6.1.d.B. Be at least nine (9) inches thick;

3.6.1.d.C. Be constructed of soil or earthen materials to ensure that the hydraulic leachate head on the compacted soil liner does not exceed one (1) foot at the expected flow capacity from the drainage area except during storm events;

3.6.1.d.D. Be comprised of clean soil or earthen materials that contain no debris, plant material, rocks, or other solid material larger than one-quarter (1/4) inch in diameter and no material with sharp edges;

3.6.1.d.E. Be graded, uniformly compacted, and smoothed;

3.6.1.d.F. Be installed in a manner that prevents damage to the compacted soil liner; and

3.6.1.d.G. Contain a perforated piping system capable of intercepting liquid within the leachate collection zone and conveying the liquid to control collection points. The piping system shall also meet the following:

3.6.1.d.G.(a) The slope sizing and spacing of the piping system shall assure that liquids drain efficiently from the leachate collection zone;

3.6.1.d.G.(b) The distance between pipes in the piping system may not exceed one (100) hundred feet on center;

3.6.1.d.G.(c) The pipes shall be installed perpendicular to the flow;

3.6.1.d.G.(d) The minimum diameter of the perforated pipe shall be four (4) inches with a wall thickness of Schedule 40 or greater;

3.6.1.d.G.(e) The pipe shall be capable of supporting anticipated loads without failure based on facility design;

3.6.1.d.G.(f) Rounded stones or aggregates shall be placed around the pipes of the piping system. The stones or aggregates shall be sized to prevent clogging of the pipes and damage to the composite liner;

3.6.1.d.G.(g) The piping system shall be installed in a fashion that facilitates cleanout, maintenance, and monitoring. Manholes or cleanout risers shall be located along the perimeter of the leachate collection piping system. The number and spacing of the manholes or cleanout risers shall be sufficient to insure proper maintenance of the piping system by water jet flushing or an equivalent method; and

3.6.1.d.G.(h) The leachate collection system shall be cleaned and maintained as necessary.

3.6.1.d.H. The construction of the leachate collection and protective cover zone shall be certified by a WV registered professional engineer and a Q.A./Q.C. report shall be submitted to the chief prior to the placement of waste tires or tire derived material in the monofill.

### 3.7. GENERAL OPERATIONAL REQUIREMENTS.

3.7.1. General Requirements for a Waste Tire Monofill or Processing Facility Activity. Unless otherwise approved by the chief in writing, no person may operate a waste tire monofill, processing facility or activity that does not conform to an approved plan of operation and the following:

3.7.1.a. Provisions must be made to secure the facility from theft, vandalism and fire, which may include posting a security guard during non-operational hours if so directed by the chief;

3.7.1.b. Confining windblown material within the operational area and controlling dust and noise;

3.7.1.c. Installing and maintaining surface water diversion ditches around the areas;

3.7.1.d. Access to the monofill facility/activity must be restricted through the use of fencing (woven wire or chain link not less than six feet in height);

3.7.1.e. Effective means must be taken to control flies, rodents, vectors, insects and vermin;

3.7.1.f. A supervisor must be on duty at the facility at all times while it is open;

3.7.1.g. The main entrance gate and emergency exit gate must be kept locked when an attendant is not on duty;

3.7.1.h. All burning is prohibited;

3.7.1.i. All topsoil within the facility construction limits shall be salvaged and stored/seeded within the property boundaries for use in the facility closure; and

3.7.1.j. Whole waste tires must be cut into at least four (4) near equal portions, or split into at least two (2) near equal portions, or shredded or chipped prior to placement in a monofill.

3.7.2. General Requirements for Tire Dealers. Tire dealers shall be required to accept D.O.T. regulated tires if

offered by their customers in exchange for tires purchased in a quantity equal to the number of tires purchased at the point of transfer.

3.7.2.a. A tire dealer may temporarily contain five hundred (500) or less waste tires on the premises for a period not exceeding ninety (90) days, unless otherwise approved by the chief in writing. The temporary containment shall be in a safe and orderly manner which does not constitute solid waste disposal. However, the chief is authorized to limit the number of waste tires stored by a tire dealer if the chief determines that the waste tires are stored in an unsafe, disorderly, or unsightly manner.

### 3.8. RECORD KEEPING AND REPORTING REQUIREMENTS.

3.8.1. Record Keeping and Reporting Requirements. Record keeping and reporting requirements for waste tire monofills/storage cells and processing facilities/activities shall include the following:

3.8.1.a. Quarterly Reports. Quarterly reports shall be submitted to the chief prior to the fifteenth day of the next quarterly reporting period on forms provided by, or acceptable to, the chief. More specifically, the report must include:

3.8.1.a.A. Date, quantity and origin of waste tires and tire derived material received at the facility;

3.8.1.a.B. Quantity/tonnage of waste tires and tire derived material processed at the facility;

3.8.1.a.C. Quantity/tonnage of waste tires and tire derived material stored at the facility;

3.8.1.a.D. Name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers transporting waste tires and tire derived material to and from the facility, including the quantity/tonnage of waste tires and tire derived material so transported.

3.8.1.b. Problems, Conditions or Changes. Also,

describe in the quarterly report any fires, vector or environmental problems, other conditions, or changes in the facility's operational procedures. In regard to fire, vector or environmental problems which have occurred, describe steps taken to prevent a reoccurrence.

3.8.1.c. **Pesticide Application.** Identify the name, type and quantities of pesticides used during the reporting period for vector control.

3.8.1.d. **Term of Record Keeping.** The permittee must retain records of the quarterly reports at the facility for not less than five (5) years.

3.8.2. **Annual Record Keeping and Reporting Requirements for Tire Dealers.** Tire dealers must keep records which include the name, address, telephone number and certificated motor carrier identification numbers of the waste tire haulers and the number of waste tires transported from the tire dealer by the waste tire haulers to verify the proper handling and management of waste tires. These records must be made available for inspection by the Chief or by his authorized representative within five (5) days upon request. All records shall be retained for a period of not less than three (3) years.

3.8.3. **Public Notice Requirements for Tire Dealers.** Tire dealers are required to post written notices on at least 8 ½ inch by 11 inch poster clearly visible to all customers and containing the universal recycling symbol and the following language: (Notices are available from the Division of Environmental Protection.)

3.8.3.a. **WASTE TIRE MANAGEMENT;**

3.8.3.b. It is illegal to improperly discard a tire in West Virginia;

3.8.3.c. State rules require us to accept D.O.T. regulated tires if offered by our customers in exchange for tires purchased in a quantity equal to the number of tires purchased at the point of transfer;

3.8.3.d. A fee may be charged by the tire dealer

for the proper disposal of the waste tire.

**3.9. BONDING AND FINANCIAL ASSURANCE REQUIREMENTS FOR WASTE TIRE PROCESSING FACILITIES, MONOFILLS AND STORAGE CELLS.**

**3.9.1. Bonding.** Bonding shall be in the amount of \$6,000 per acre with a minimum amount of \$10,000, as specified in section 22-15-12 of the Code. An additional bond of two dollars per whole waste tire to be received and stored at any given time as projected in the application and/or permit shall be required. Such two dollar per tire bond will not be released until all tires are removed from the waste tire processing facility, waste tire monofill or storage cell.

**3.10. CLOSURE REQUIREMENTS FOR A WASTE TIRE MONOFILL/STORAGE CELL OR PROCESSING FACILITY/ACTIVITY.**

**3.10.1. Closure of a Waste Tire Monofill/Storage Cell or Processing Facility/Activity.** Should a facility or activity cease operations, or be required to do so by any agency, all of the requirements of 47 CSR 38, section 6 shall be complied with as applicable including, but not limited to, those specified below:

**3.10.1.a. Removal of Miscellaneous Materials.** All miscellaneous waste materials including but not limited to wheel rims, hubcaps, paper, trucks, trailers, containers, machinery and other items or debris remaining at the facility at closure shall be removed and taken to a division of environmental protection approved solid waste facility for reuse, recycling and/or disposal as provided in section 3.9.1 of this rule, no bond may be released until all provisions of this rule have been met.

**3.10.1.b. Security During Closure.** All trucks, trailers, containers, structures and machinery shall be secured until removed;

**3.10.1.c. Revegetation.** All disturbed ground shall be graded, mulched and seeded; and

**3.10.1.d. Sediment and Erosion Control Structures.** Sediment and erosion control structures shall be

installed and maintained as necessary to comply with 47 CSR 38 section 4.5.2.c.

3.10.1.e. Facility Closure Plan. All applicants must submit a closure plan in the permit application.

3.10.2 Storm Water. Storm water and surface water drainage must be directed away from the facility or activity in a manner consistent with state water quality standards.

3.10.3. Closure Cap for a Waste Tire Monofill. A closure cap shall immediately be installed over the final placement of waste tires or tire derived material consisting of:

3.10.3.a. A substantial separation filter cloth to prevent soil or any other material from coming in contact with the tire material; and

3.10.3.b. A minimum of one (1) foot of intermediate cover soil shall be placed and compacted directly over the filter cloth to create a fire break, minimize the inflow of precipitation and to protect the filter cloth from damage; and

3.10.3.c. A final one (1) foot minimum layer of soil sloped not less than three percent (3%) nor more than twenty-five percent (25%) grade shall be placed and compacted directly over the intermediate cover and revegetated (amendments, mulch, seed) as applicable in accordance with 47 CSR 38 section 4.5.6.

3.10.3.d. Daily Q.A./Q.C. reports in accordance with 47 CSR 38 Section 4.5.5.b.I as applicable, shall be prepared and maintained in a bound log book at the site in regard to the closure cap construction.

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SENATE BILL NO. 177

(By Senators Ross, Anderson, Boley,  
Buckalew, Grubb and Macnaughtan)

[Introduced January 29, 1996; referred  
to the Committee on

NATURAL RESOURCES

FINANCE

THE JUDICIARY

47-389

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 legislative rules relating to  
15 waste tire management.

16 Be it enacted by the Legislature of West Virginia:

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

21 ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT

22 TO PROMULGATE LEGISLATIVE RULES.

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

24 (a) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred  
2 ninety-four, authorized under the authority of section  
3 four, article five, chapter twenty-two, of this code,  
4 modified by the division of environmental protection to  
5 meet the objections of the legislative rule-making review  
6 committee and refiled in the state register on the  
7 twenty-third day of November, one thousand nine hundred  
8 ninety-four, relating to the division of environmental  
9 protection (requirements for determining conformity of  
10 general federal actions to applicable air quality  
11 implementation plans (general conformity), 45 CSR 35), are  
12 authorized.

13 (b) The legislative rules filed in the state register  
14 on the twelfth day of August, one thousand nine hundred  
15 ninety-four, authorized under the authority of section  
16 four, article five, chapter twenty-two, of this code,  
17 modified by the division of environmental protection to  
18 meet the objections of the legislative rule-making review  
19 committee and refiled in the state register on the  
20 twenty-third day of November, one thousand nine hundred  
21 ninety-four, relating to the division of environmental  
22 protection (emission standards for hazardous air pollutants  
23 pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

24 (c) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred  
2 ninety-four, authorized under the authority of section  
3 five, article twenty, chapter sixteen, of this code,  
4 modified by the division of environmental protection to  
5 meet the objections of the legislative rule-making review  
6 committee and refiled in the state register on the  
7 twenty-third day of November, one thousand nine hundred  
8 ninety-four, relating to the division of environmental  
9 protection (standards of performance for new stationary  
10 sources, 45 CSR 16), are authorized with the amendment set  
11 forth below:

12 "On page two, section 4, subsection 4.1, subdivision  
13 4.1.i, by striking out 'Part 60.195(b)' and inserting in  
14 lieu thereof 'Part 60.194(d)';

15 On page two, section 4, subsection 4.1., subdivision  
16 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting  
17 in lieu thereof 'Part 60.335(f)(1)';

18 And,

19 On page two, section 4, after subdivision 'k', by  
20 inserting a new subdivision to read as follows:

21 '1. Part 60.335(f)(1).'

22 (d) The legislative rules filed in the state register  
23 on the fifteenth day of August, one thousand nine hundred  
24 ninety-four, authorized under the authority of section

1 four, article five, chapter twenty-two, of this code,  
2 modified by the division of environmental protection to  
3 meet the objections of the legislative rule-making review  
4 committee and refiled in the state register on the  
5 nineteenth day of December, one thousand nine hundred  
6 ninety-four, relating to the division of environmental  
7 protection (permits for construction and major modification  
8 of major stationary sources of air pollution for the  
9 prevention of significant deterioration, 45 CSR 14), are  
10 authorized.

11 (e) The legislative rules filed in the state register  
12 on the twelfth day of August, one thousand nine hundred  
13 ninety-four, authorized under the authority of section  
14 four, article five, chapter twenty-two, of this code,  
15 modified by the division of environmental protection to  
16 meet the objections of the legislative rule-making review  
17 committee and refiled in the state register on the  
18 twenty-third day of November, one thousand nine hundred  
19 ninety-four, relating to the division of environmental  
20 protection (requirements for determining conformity of  
21 transportation plans, programs and projects developed,  
22 funded or approved under title 23 U.S.C. or the federal  
23 transit act, to applicable air quality implementation  
24 plans, 45 CSR 36), are authorized.

1           (f) The legislative rules filed in the state register  
2 on the twelfth day of August, one thousand nine hundred  
3 ninety-four, authorized under the authority of section  
4 four, article five, chapter twenty-two, of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the twenty-  
8 ninth day of December, one thousand nine hundred  
9 ninety-four, relating to the division of environmental  
10 protection (to prevent and control air pollution from the  
11 operation of coal preparation plants and coal handling  
12 operations, 45 CSR 5), are authorized.

13           (g) The legislative rules filed in the state register  
14 on the thirteenth day of September, one thousand nine  
15 hundred ninety-four, authorized under the authority of  
16 section four, article five, chapter twenty-two, of this  
17 code, modified by the division of environmental protection  
18 to meet the objections of the legislative rule-making  
19 review committee and refiled in the state register on the  
20 twelfth day of January, one thousand nine hundred  
21 ninety-five, relating to the division of environmental  
22 protection (to prevent and control air pollution from  
23 hazardous waste treatment, storage or disposal facilities,  
24 45 CSR 25), are authorized.

1           (h) The legislative rules filed in the state register  
2 on the twelfth day of August, one thousand nine hundred  
3 ninety-four, authorized under the authority of section  
4 four, article five, chapter twenty-two, of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the  
8 twenty-third day of November, one thousand nine hundred  
9 ninety-four, relating to the division of environmental  
10 protection (acid rain provisions and permits, 45 CSR 33),  
11 are authorized.

12           (i) The legislative rules filed in the state register  
13 on the twelfth day of August, one thousand nine hundred  
14 ninety-four, authorized under the authority of section two,  
15 article one, chapter twenty-two, of this code, modified by  
16 the division of environmental protection to meet the  
17 objections of the legislative rule-making review committee  
18 and refiled in the state register on the twenty-third day  
19 of November, one thousand nine hundred ninety-four,  
20 relating to the division of environmental protection  
21 (emission standards for hazardous air pollutants pursuant  
22 to 40 CFR Part 61, 45 CSR 15), are authorized.

23           (j) The legislative rules filed in the state register  
24 on the twelfth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section  
2 four, article five, chapter twenty-two, of this code,  
3 modified by the division of environmental protection to  
4 meet the objections of the legislative rule-making review  
5 committee and refiled in the state register on the  
6 twenty-third day of November, one thousand nine hundred  
7 ninety-four, relating to the division of environmental  
8 protection (provisions for determination of compliance with  
9 air quality management rules, 45 CSR 38), are authorized.

10 (k) The legislative rules filed in the state register  
11 on the twelfth day of August, one thousand nine hundred  
12 ninety-four, authorized under the authority of section  
13 five, article twenty, chapter sixteen, of this code,  
14 modified by the division of environmental protection to  
15 meet the objections of the legislative rule-making review  
16 committee and refiled in the state register on the  
17 twenty-third day of November, one thousand nine hundred  
18 ninety-four, relating to the division of environmental  
19 protection (to prevent and control air pollution from  
20 combustion of refuse, 45 CSR 6), are authorized.

21 (l) The legislative rules filed in the state register  
22 on the fifteenth day of August, one thousand nine hundred  
23 ninety-four, authorized under the authority of section  
24 four, article fourteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to  
2 meet the objections of the legislative rule-making review  
3 committee and refiled in the state register on the fourth  
4 day of January, one thousand nine hundred ninety-five,  
5 relating to the division of environmental protection (dam  
6 safety, 47 CSR 34), are authorized with the amendments set  
7 forth below:

8       On page 9, section §47-34-3, by striking out  
9 3.5.2.c.A, and substituting therefor the following:

10       "3.5.2.c.A. An impoundment exceeding forty (40) feet  
11 in height or four hundred (400) acre-feet storage volume  
12 shall not be classified as a Class 3 dam."

13       On pages 17 and 18, section §47-34-7, at the end of  
14 section 7.1.1.b.C. by adding the following:

15       "The design precipitation for a Class 3 dam may be  
16 reduced based on Risk Assessment pursuant to paragraph  
17 3.5.4 of this rule, but in no case to less than a P100  
18 rainfall of six (6) hours in duration."

19       On page 40, section §47-34-13, by striking out section  
20 13.2 and substituting therefor the following:

21       "Performance Requirements - All dams completed before  
22 July 1, 1973, shall meet the applicable design requirements  
23 of Section 7 of this rule. Those dams which do not meet  
24 the applicable design requirement of Section 7 of this rule

1 shall be modified, breached, removed, or properly abandoned  
2 pursuant to the provisions of this rule. In developing the  
3 required plans, specifications, and documentation necessary  
4 to bring the structure into conformity with section 7 of  
5 this rule, the design engineer may consider in his  
6 submitted analyses, peculiarities and local conditions for  
7 each impounding structure with recognition of the many  
8 factors involved, some of which may not be precisely known.  
9 Existing construction documentation and the historical  
10 performance of the structure including documented storms  
11 and spillway flows may be considered by the engineer as  
12 part of the evaluation of the structure. Upon approval by  
13 the Director of the plans, specifications, and  
14 documentation submitted by the engineer, the Director may  
15 issue a certificate of approval."

16 (m) The legislative rules filed in the state register  
17 on the fifteenth day of August, one thousand nine hundred  
18 ninety-four, authorized under the authority of section  
19 fifteen, article one, chapter twenty-two, of this code,  
20 modified by the division of environmental protection to  
21 meet the objections of the legislative rule-making review  
22 committee and refiled in the state register on the eleventh  
23 day of January, one thousand nine hundred ninety-five,  
24 relating to the division of environmental protection

1 (regulations governing environmental laboratories  
2 certification and standards of performance, 47 CSR 32), are  
3 authorized.

4 (n) The legislative rules filed in the state register  
5 on the twenty-eighth day of February, one thousand nine  
6 hundred ninety-four, authorized under the authority of  
7 section three, article two, chapter twenty-two-c, of this  
8 code, modified by the division of environmental protection  
9 to meet the objections of the legislative rule-making  
10 review committee and refiled in the state register on the  
11 twenty-eighth day of July, one thousand nine hundred  
12 ninety-four, relating to the division of environmental  
13 protection (state water pollution control revolving fund  
14 program, 47 CSR 31), are authorized.

15 (o) The legislative rules filed in the state register  
16 on the fifteenth day of August, one thousand nine hundred  
17 ninety-four, authorized under the authority of section six,  
18 article seventeen, chapter twenty-two, of this code,  
19 relating to the division of environmental protection  
20 (underground storage tanks, 47 CSR 36), are authorized.

21 (p) The legislative rules filed in the state register  
22 on the fifteenth day of August, one thousand nine hundred  
23 ninety-four, authorized under the authority of section six,  
24 article eighteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to  
2 meet the objections of the legislative rule-making review  
3 committee and refiled in the state register on the  
4 thirteenth day of January, one thousand nine hundred  
5 ninety-five, relating to the division of environmental  
6 protection (hazardous waste management regulations, 47 CSR  
7 35), are authorized.

8 (q) The legislative rules filed in the state register  
9 on the twenty-second day of July, one thousand nine hundred  
10 ninety-four, authorized under the authority of section  
11 four, article three, chapter twenty-two, of this code,  
12 modified by the division of environmental protection to  
13 meet the objections of the legislative rule-making review  
14 committee and refiled in the state register on the  
15 twenty-ninth day of August, one thousand nine hundred  
16 ninety-four, relating to the division of environmental  
17 protection (standards for certification of blasters-surface  
18 coal mines, 38 CSR 2C), are authorized with the amendments  
19 set forth below:

20 On page 4, section 38.2C.4, after the words "Form  
21 MR-30-TR." by inserting a second paragraph to read as  
22 follows:

23 "In lieu of completing the training program, the  
24 applicant for certification or re-certification may

1 complete a self-study course using the study guide and  
2 other materials available from the Division of  
3 Environmental Protection."

4 On page 8, subsection 8.2, after the words "refresher  
5 training course" by inserting the phrase "or complete the  
6 self-study course."

7 On page 8 at subsection 10.1 by striking out the  
8 phrase "a cessation order and/or take other action as  
9 provided in West Virginia Code 22-3-16 and 17" and the  
10 phrase "the provisions of West Virginia Code 22-3-1 et  
11 seq., rules promulgated under that article, or".

12 On page 9, subsection 11.1, by striking out the  
13 subsection and inserting in lieu thereof a new subsection  
14 to read as follows: "11.1. **Suspension** - Upon service of a  
15 written notice of violation by the Director to a certified  
16 blaster, the Director may suspend his or her certification.  
17 Prior to the issuance of such an order, the certified  
18 blaster shall be granted a hearing before the Director to  
19 show cause why his or her certification should not be  
20 suspended."

21 On page 9, subsection 11.2, by striking out the phrase  
22 "or cessation order" in the first sentence.

23 On page 9, Section 12, by striking out the phrase  
24 "cessation order".

1       (r) The legislative rules filed in the state register  
2 on the fifteenth day of August, one thousand nine hundred  
3 ninety-four, authorized under the authority of section  
4 nine, article three, chapter twenty-two, of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the sixth  
8 day of January, one thousand nine hundred ninety-five,  
9 relating to the division of environmental protection (rules  
10 and regulations relating to abandoned mine lands and  
11 reclamation, 38 CSR 2D), are authorized.

12       (s) The Legislature hereby authorizes and directs the  
13 division of environmental protection to promulgate the  
14 legislative rules filed in the state register on February,  
15 seventh, one thousand nine hundred ninety-five, authorized  
16 under the authority of section five, article twenty,  
17 chapter sixteen, of this code, relating to the division of  
18 environmental protection (prevention and control of  
19 particulate air pollution from combustion of fuel in  
20 indirect heat exchangers, 45 CSR 2), effective the first  
21 day of May, one thousand nine hundred ninety-five, with the  
22 amendments set forth below:

23 On page eight, section 3.4(e) after the word "operated" by  
24 adding the words "at normal operating loads";

1 And,

2 On page thirteen, section 9.4 by striking the words  
3 "monthly or", and, following the words "quarterly basis" by  
4 striking the word "as"; and by inserting the words "unless  
5 otherwise" following the words "quarterly basis".

6 And,

7 On page thirteen, by creating a new section, designated  
8 section "45.2.10. Variances.

9 10.1. In the event of an unavoidable shortage of fuel  
10 having characteristics or specifications necessary for a  
11 fuel burning unit to comply with the opacity standards set  
12 forth in section 3 or any emergency situation or condition  
13 creating a threat to public safety or welfare, the Director  
14 may grant an exception to the otherwise applicable visible  
15 emission standards for a period not to exceed fifteen (15)  
16 days, provided that visible emissions during the exception  
17 period do not exceed a maximum six (6) minute average of  
18 thirty (30) percent and that a reasonable demonstration is  
19 made by the owner or operator that the emission standards  
20 under section 4 of this rule will not be exceeded during  
21 the exemption period."

22 10.2. In the event a fuel burning unit employing a  
23 flue gas desulphurization system must by-pass such system  
24 because of necessary planned or unplanned maintenance,

1 visible emissions may not exceed twenty percent (20%)  
2 opacity during such period of maintenance. The Director  
3 may require advance notice of necessary planned  
4 maintenance, including a description of the necessity of  
5 the maintenance activity and its expected duration and may  
6 limit the duration of the variance or the amount of the  
7 excess opacity exception herein allowed. The Director  
8 shall be notified of unplanned maintenance and may limit  
9 the duration of the variance or the amount of excess  
10 opacity exception allowed during unplanned maintenance.

11 And, by renumbering subsequent sections.

12 (t) The legislative rules filed in the state register  
13 on the nineteenth day of August, one thousand nine hundred  
14 ninety-four, authorized under the authority of section  
15 four, article three, chapter twenty-two, of this code,  
16 relating to the division of environmental protection  
17 (surface mining and reclamation regulations, 38 CSR 2), are  
18 authorized "with the amendments set forth below"

19 On pages 2 and 3, by striking out subsections 1.6, 1.7  
20 and 1.8 in their entirety;

21 On page 6, by inserting a new subsection 2.20, to read  
22 as follows, and renumbering subsequent subsections;

23 "Chemical Treatment means - the treatment of water  
24 from a surface coal mining operation using chemical

1 reagents such as but not limited to sodium hydroxide,  
2 calcium carbonate, or anhydrous ammonia for purposes of  
3 meeting applicable state and federal effluent limitations.  
4 Chemical treatment does not include passive treatment  
5 systems such as but not limited to limestone drains,  
6 wetlands, alkaline addition, application of flyash,  
7 agricultural lime, or injection of flyash, limestone, or  
8 other minerals into underground coal operations."

9       On page 16, section 2, by striking out subsection 2.92  
10 and renumbering the subsequent subsections.

11       On page 25, by striking the second paragraph of  
12 subsection 3.1 (o) and inserting in lieu thereof a new  
13 second paragraph 3.1 of subsection 3.1 (o), to read as  
14 follows: "Any permit application which references an  
15 approved centralized ownership and control file may be  
16 determined to be complete and accurate for the purposes of  
17 this subsection. Each centralized ownership and control  
18 file shall at a minimum:"

19       On page 63, by striking out subsection 3.25 (e).

20       On page 63, by striking out the first sentence in  
21 subsection 3.26, and inserting in lieu thereof the  
22 following:

23       "(a) All changes including name changes, replacements,  
24 and additions to the ownership or control data relative to

1 a permittee or assignee who will function as an operator  
2 pursuant to the provisions of paragraph (c) of subsection  
3 3.25 of this rule shall be reported to the Director."

4 On page 64, after subsection 3.26 (a) (5) by inserting  
5 a new subsection 3.26 (a) (6) to read as follows:

6 "(6) In the event that a permittee or operator has  
7 incurred no changes in its ownership and control  
8 information and therefore has not been obligated to file  
9 a report within any consecutive twelve-month period, that  
10 permittee or operator is required to notify the Director in  
11 writing that no changes to the information required by  
12 paragraphs (b), (c), (d) and (i) of subsection 3.1 of this  
13 rule have occurred."

14 On page 64, by striking out subsection 3.27 (a) and  
15 inserting in lieu thereof the following:

16 "(a) All active surface mining operations shall be  
17 subject to the renewal requirements and provisions for  
18 issuance of a renewal discussed in Section 19 of the Act:  
19 *Provided*, That the Director may waive the requirement for  
20 renewal if the permittee certifies in writing that all coal  
21 extraction is completed, that all backfilling and regrading  
22 will be completed within sixty (60) days prior to the  
23 expiration date of the permit, and that an application for  
24 Phase I bond release will be filed prior to the expiration

1 date of the permit. Failure of the permittee complete  
2 backfilling and regrading within sixty (60) days prior to  
3 the expiration date of the permit will nullify the waiver.

4 Those operations which have been granted inactive  
5 status in accordance with subsection 14.11 of this rule  
6 shall also be subject to the renewal requirements of  
7 Section 19 of the Act.

8 Applications for renewal shall be filed on forms  
9 provided by the Director and shall contain at a minimum the  
10 following information:"

11 On page 79, by striking out subsection 3.32 (i) and  
12 renumbering the remaining subsections.

13 On page 80, subsection 3.34 (b) after the word  
14 "criteria" by inserting the words "paragraph (b) of  
15 subsection 3.32 of this section";

16 On page 80, by striking out subsection 3.34 (b) (3)  
17 and substituting therefor a new subsection 3.34 (b) (3), to  
18 read as follows: "(3) The permittee was linked to a  
19 violation, penalty or fee through ownership or control,  
20 under the violation review criteria, paragraph (b) of  
21 subsection 3.32 of this section at the time the permit was  
22 issued and an ownership or control link between the  
23 permittee and the person responsible for the violation,  
24 penalty or fee still exists, or when the link was severed

1 the permittee continues to be responsible for the  
2 violation, penalty or fee."

3 On page 82, by striking out subsection 3.34 (g) and  
4 substituting therefor a new subparagraph (g) to read as  
5 follows:

6 "(g) For purposes of this subsection, a permit is  
7 issued when it is originally approved, as well as when a  
8 transfer, assignment, or sale of permit rights is approved  
9 pursuant to paragraphs (a) or (c), subsection 3.25 of this  
10 rule, or where a permit is revised pursuant to subsection  
11 3.26 of this rule."

12 On page 86, at the end of subsection 4.4, by adding  
13 the following sentence: "Prospecting roads are to be  
14 designed, constructed, maintained, and reclaimed in  
15 accordance with the provisions of subsection 13.6 of this  
16 rule."

17 On page 88, by inserting a new subsection 4.7 (a) (1)  
18 to read as follows: "(1) Minimize downstream sedimentation  
19 and flooding and renumbering the remaining subsections.

20 On page 92, subsection 4.12, by inserting a new  
21 sentence between the second and third sentence which reads  
22 as follows: "Where the certification statement indicates a  
23 change from the design standards or construction  
24 requirements approved in the permit, such changes will be

1 documented in as-built plans and submitted for approval to  
2 the Director as a permit revision."

3 On Page 148, section 11.6 (a) in the underscored  
4 language, after the word, "completed" by inserting the  
5 words "or nearly completed".

6 On Page 223, by striking out subsection 14.14 (g) (8)  
7 and inserting in lieu thereof a new subsection 14.14 (g)  
8 (8), to read as follows: "(8) Surface water runoff from  
9 areas above and adjacent to the fill shall be diverted into  
10 properly designed and constructed stabilized diversion  
11 channels which have been designed using best current  
12 technology to safely pass the peak runoff from a 100 year,  
13 24-hour precipitation event. The channel shall be designed  
14 and constructed to ensure stability of the fill, control  
15 erosion, and minimize water infiltration into the fill."

16 On Page 232, by inserting a new subsection, designated  
17 subsection 14.19 (d) to read as follows: "(d) Timber from  
18 clearing and grubbing operations may be wind-rowed below  
19 the projected toe of the outslope in a manner that will  
20 provide shelter and habitat for game and non-game wildlife  
21 and provide for enhanced sediment control. These materials  
22 may not be placed in natural water courses or where they  
23 will be covered by spoil material at the toe of the  
24 outslope. The wind-rows must be of relatively uniform

1 height and width and must be more or less evenly  
2 distributed along the lower reaches and within the permit  
3 area."

4       On Page 240, subsection 17.1, in the first sentence,  
5 after the words "mining and reclamation," by striking out  
6 the remainder of the paragraph and substituting therefor  
7 the following: "required by the Act and these Rules,  
8 including the engineering analyses and designs; the  
9 development of cross-section maps and plans; the geologic  
10 drilling and statement of results of test borings and core  
11 samplings; preblast surveys; the collection of  
12 site-specific resource information and production of  
13 protection and enhancement plans for fish and wildlife  
14 habitats and other environmental values; and the collection  
15 of archaeological and historical information; and any other  
16 archaeological and historical information required by the  
17 federal department of the interior and the preparation of  
18 plans that may be necessitated thereby; and the director  
19 shall provide or assume the cost of training coal operators  
20 that meet the qualifications concerning the preparation of  
21 permit applications and compliance with the regulatory  
22 program, and shall ensure that qualified coal operators are  
23 aware of the assistance available under this section.

24       On Page 240, subsection 17.1, after the first

1 paragraph by inserting a new paragraph, to read as follows:  
2 "The Director will develop a procedure for the interstate  
3 coordination and exchange of information collected under  
4 the Small Operators Assistance Program."

5 On Page 241, by striking out subsection 17.4 in its  
6 entirety and substituting therefor the following: "17.4  
7 Request for Assistance. Each applicant requesting  
8 assistance shall provide information on forms provided by  
9 the director in an application that shall be clear and  
10 concise and shall be provided in a format prescribed by the  
11 Director and/or a format required by the Federal Office of  
12 Surface Mining Reclamation and Enforcement."

13 On Page 249, subsection 17.7 (a) (4), after the words  
14 "twelve (12) month period" by striking the remainder of the  
15 sentence and inserting in lieu thereof the words  
16 "immediately following permit issuance."

17 On page 273, subsection 20.6 (a), after the word  
18 "first" by striking out the words "thirty (30)" and  
19 inserting in lieu thereof the word "fifteen".

20 On page 273, subsection 20.6 (c), after the words  
21 "date of the" by striking out the words "Assessment Officer  
22 receiving the  
23 finding specified in paragraph (a) of this subsection." and  
24 inserting in lieu thereof the words "issuance of a notice

1 or order";

2 On page 274, subsection 20.6 (d), by striking out the  
3 first sentence, and inserting in lieu thereof the  
4 following: "The time and place of an informal assessment  
5 conference shall be posted at the Department of  
6 Environmental Protection Office nearest to the operation.

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

18

19 NOTE: The purpose of this bill is to authorize the  
20 Division of Environmental Protection to promulgate  
21 legislative rules relating to waste tire management.

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.

5424

H. B. 4245

(By Delegates Douglas, Gallagher, Faircloth, Compton,  
Linch and Riggs)

(Introduced January 29, 1996; referred to the  
Committee on the Judiciary)

47-389

A BILL to amend and reenact section one, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of environmental protection to promulgate legislative rules relating to waste tire management.

Be it enacted by the Legislature of West Virginia:

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

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

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

(a) The legislative rules filed in the state register

4245

1 on the twelfth day of August, one thousand nine hundred  
2 ninety-four, authorized under the authority of section  
3 four, article five, chapter twenty-two, of this code,  
4 modified by the division of environmental protection to  
5 meet the objections of the legislative rule-making review  
6 committee and refiled in the state register on the  
7 twenty-third day of November, one thousand nine hundred  
8 ninety-four, relating to the division of environmental  
9 protection (requirements for determining conformity of  
10 general federal actions to applicable air quality  
11 implementation plans (general conformity), 45 CSR 35), are  
12 authorized.

13 (b) The legislative rules filed in the state register  
14 on the twelfth day of August, one thousand nine hundred  
15 ninety-four, authorized under the authority of section  
16 four, article five, chapter twenty-two, of this code,  
17 modified by the division of environmental protection to  
18 meet the objections of the legislative rule-making review  
19 committee and refiled in the state register on the  
20 twenty-third day of November, one thousand nine hundred  
21 ninety-four, relating to the division of environmental  
22 protection (emission standards for hazardous air pollutants  
23 pursuant to 40 CFR Part 63, 45 CSR 34), are authorized.

24 (c) The legislative rules filed in the state register

1 on the twelfth day of August, one thousand nine hundred  
2 ninety-four, authorized under the authority of section  
3 five, article twenty, chapter sixteen, of this code,  
4 modified by the division of environmental protection to  
5 meet the objections of the legislative rule-making review  
6 committee and refiled in the state register on the  
7 twenty-third day of November, one thousand nine hundred  
8 ninety-four, relating to the division of environmental  
9 protection (standards of performance for new stationary  
10 sources, 45 CSR 16), are authorized with the amendment set  
11 forth below:

12 "On page two, section 4, subsection 4.1, subdivision  
13 4.1.i, by striking out 'Part 60.195(b)' and inserting in  
14 lieu thereof 'Part 60.194(d)';

15 On page two, section 4, subsection 4.1., subdivision  
16 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting  
17 in lieu thereof 'Part 60.335(f)(1)';

18 And,

19 On page two, section 4, after subdivision 'k', by  
20 inserting a new subdivision to read as follows:

21 '1. Part 60.335(f)(1).'

22 (d) The legislative rules filed in the state register  
23 on the fifteenth day of August, one thousand nine hundred  
24 ninety-four, authorized under the authority of section

1 four, article five, chapter twenty-two, of this code,  
2 modified by the division of environmental protection to  
3 meet the objections of the legislative rule-making review  
4 committee and refiled in the state register on the  
5 nineteenth day of December, one thousand nine hundred  
6 ninety-four, relating to the division of environmental  
7 protection (permits for construction and major modification  
8 of major stationary sources of air pollution for the  
9 prevention of significant deterioration, 45 CSR 14), are  
10 authorized.

11 (e) The legislative rules filed in the state register  
12 on the twelfth day of August, one thousand nine hundred  
13 ninety-four, authorized under the authority of section  
14 four, article five, chapter twenty-two, of this code,  
15 modified by the division of environmental protection to  
16 meet the objections of the legislative rule-making review  
17 committee and refiled in the state register on the  
18 twenty-third day of November, one thousand nine hundred  
19 ninety-four, relating to the division of environmental  
20 protection (requirements for determining conformity of  
21 transportation plans, programs and projects developed,  
22 funded or approved under title 23 U.S.C. or the federal  
23 transit act, to applicable air quality implementation  
24 plans, 45 CSR 36), are authorized.

1 (f) The legislative rules filed in the state register  
2 on the twelfth day of August, one thousand nine hundred  
3 ninety-four, authorized under the authority of section  
4 four, article five, chapter twenty-two, of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the twenty-  
8 ninth day of December, one thousand nine hundred  
9 ninety-four, relating to the division of environmental  
10 protection (to prevent and control air pollution from the  
11 operation of coal preparation plants and coal handling  
12 operations, 45 CSR 5), are authorized.

13 (g) The legislative rules filed in the state register  
14 on the thirteenth day of September, one thousand nine  
15 hundred ninety-four, authorized under the authority of  
16 section four, article five, chapter twenty-two, of this  
17 code, modified by the division of environmental protection  
18 to meet the objections of the legislative rule-making  
19 review committee and refiled in the state register on the  
20 twelfth day of January, one thousand nine hundred  
21 ninety-five, relating to the division of environmental  
22 protection (to prevent and control air pollution from  
23 hazardous waste treatment, storage or disposal facilities,  
24 45 CSR 25), are authorized.

1           (h) The legislative rules filed in the state register  
2 on the twelfth day of August, one thousand nine hundred  
3 ninety-four, authorized under the authority of section  
4 four, article five, chapter twenty-two, of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the  
8 twenty-third day of November, one thousand nine hundred  
9 ninety-four, relating to the division of environmental  
10 protection (acid rain provisions and permits, 45 CSR 33),  
11 are authorized.

12           (i) The legislative rules filed in the state register  
13 on the twelfth day of August, one thousand nine hundred  
14 ninety-four, authorized under the authority of section two,  
15 article one, chapter twenty-two, of this code, modified by  
16 the division of environmental protection to meet the  
17 objections of the legislative rule-making review committee  
18 and refiled in the state register on the twenty-third day  
19 of November, one thousand nine hundred ninety-four,  
20 relating to the division of environmental protection  
21 (emission standards for hazardous air pollutants pursuant  
22 to 40 CFR Part 61, 45 CSR 15), are authorized.

23           (j) The legislative rules filed in the state register  
24 on the twelfth day of August, one thousand nine hundred

1 ninety-four, authorized under the authority of section  
2 four, article five, chapter twenty-two, of this code,  
3 modified by the division of environmental protection to  
4 meet the objections of the legislative rule-making review  
5 committee and refiled in the state register on the  
6 twenty-third day of November, one thousand nine hundred  
7 ninety-four, relating to the division of environmental  
8 protection (provisions for determination of compliance with  
9 air quality management rules, 45 CSR 38), are authorized.

10 (k) The legislative rules filed in the state register  
11 on the twelfth day of August, one thousand nine hundred  
12 ninety-four, authorized under the authority of section  
13 five, article twenty, chapter sixteen, of this code,  
14 modified by the division of environmental protection to  
15 meet the objections of the legislative rule-making review  
16 committee and refiled in the state register on the  
17 twenty-third day of November, one thousand nine hundred  
18 ninety-four, relating to the division of environmental  
19 protection (to prevent and control air pollution from  
20 combustion of refuse, 45 CSR 6), are authorized.

21 (l) The legislative rules filed in the state register  
22 on the fifteenth day of August, one thousand nine hundred  
23 ninety-four, authorized under the authority of section  
24 four, article fourteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to  
2 meet the objections of the legislative rule-making review  
3 committee and refiled in the state register on the fourth  
4 day of January, one thousand nine hundred ninety-five,  
5 relating to the division of environmental protection (dam  
6 safety, 47 CSR 34), are authorized with the amendments set  
7 forth below:

8 On page 9, section §47-34-3, by striking out  
9 3.5.2.c.A, and substituting therefor the following:

10 "3.5.2.c.A. An impoundment exceeding forty (40) feet  
11 in height or four hundred (400) acre-feet storage volume  
12 shall not be classified as a Class 3 dam."

13 On pages 17 and 18, section §47-34-7, at the end of  
14 section 7.1.1.b.C. by adding the following:

15 "The design precipitation for a Class 3 dam may be  
16 reduced based on Risk Assessment pursuant to paragraph  
17 3.5.4 of this rule, but in no case to less than a P100  
18 rainfall of six (6) hours in duration."

19 On page 40, section §47-34-13, by striking out section  
20 13.2 and substituting therefor the following:

21 "Performance Requirements - All dams completed before  
22 July 1, 1973, shall meet the applicable design requirements  
23 of Section 7 of this rule. Those dams which do not meet  
24 the applicable design requirement of Section 7 of this rule

1 shall be modified, breached, removed, or properly abandoned  
2 pursuant to the provisions of this rule. In developing the  
3 required plans, specifications, and documentation necessary  
4 to bring the structure into conformity with section 7 of  
5 this rule, the design engineer may consider in his  
6 submitted analyses, peculiarities and local conditions for  
7 each impounding structure with recognition of the many  
8 factors involved, some of which may not be precisely known.  
9 Existing construction documentation and the historical  
10 performance of the structure including documented storms  
11 and spillway flows may be considered by the engineer as  
12 part of the evaluation of the structure. Upon approval by  
13 the Director of the plans, specifications, and  
14 documentation submitted by the engineer, the Director may  
15 issue a certificate of approval."

16 (m) The legislative rules filed in the state register  
17 on the fifteenth day of August, one thousand nine hundred  
18 ninety-four, authorized under the authority of section  
19 fifteen, article one, chapter twenty-two, of this code,  
20 modified by the division of environmental protection to  
21 meet the objections of the legislative rule-making review  
22 committee and refiled in the state register on the eleventh  
23 day of January, one thousand nine hundred ninety-five,  
24 relating to the division of environmental protection

1 (regulations governing environmental laboratories  
2 certification and standards of performance, 47 CSR 32), are  
3 authorized.

4 (n) The legislative rules filed in the state register  
5 on the twenty-eighth day of February, one thousand nine  
6 hundred ninety-four, authorized under the authority of  
7 section three, article two, chapter twenty-two-c, of this  
8 code, modified by the division of environmental protection  
9 to meet the objections of the legislative rule-making  
10 review committee and refiled in the state register on the  
11 twenty-eighth day of July, one thousand nine hundred  
12 ninety-four, relating to the division of environmental  
13 protection (state water pollution control revolving fund  
14 program, 47 CSR 31), are authorized.

15 (o) The legislative rules filed in the state register  
16 on the fifteenth day of August, one thousand nine hundred  
17 ninety-four, authorized under the authority of section six,  
18 article seventeen, chapter twenty-two, of this code,  
19 relating to the division of environmental protection  
20 (underground storage tanks, 47 CSR 36), are authorized.

21 (p) The legislative rules filed in the state register  
22 on the fifteenth day of August, one thousand nine hundred  
23 ninety-four, authorized under the authority of section six,  
24 article eighteen, chapter twenty-two, of this code,

1 modified by the division of environmental protection to  
2 meet the objections of the legislative rule-making review  
3 committee and refiled in the state register on the  
4 thirteenth day of January, one thousand nine hundred  
5 ninety-five, relating to the division of environmental  
6 protection (hazardous waste management regulations, 47 CSR  
7 35), are authorized.

8 (q) The legislative rules filed in the state register  
9 on the twenty-second day of July, one thousand nine hundred  
10 ninety-four, authorized under the authority of section  
11 four, article three, chapter twenty-two, of this code,  
12 modified by the division of environmental protection to  
13 meet the objections of the legislative rule-making review  
14 committee and refiled in the state register on the  
15 twenty-ninth day of August, one thousand nine hundred  
16 ninety-four, relating to the division of environmental  
17 protection (standards for certification of blasters-surface  
18 coal mines, 38 CSR 2C), are authorized with the amendments  
19 set forth below:

20 On page 4, section 38.2C.4, after the words "Form  
21 MR-30-TR." by inserting a second paragraph to read as  
22 follows:

23 "In lieu of completing the training program, the  
24 applicant for certification or re-certification may

1 complete a self-study course using the study guide and  
2 other materials available from the Division of  
3 Environmental Protection."

4 On page 8, subsection 8.2, after the words "refresher  
5 training course" by inserting the phrase "or complete the  
6 self-study course."

7 On page 8 at subsection 10.1 by striking out the  
8 phrase "a cessation order and/or take other action as  
9 provided in West Virginia Code 22-3-16 and 17" and the  
10 phrase "the provisions of West Virginia Code 22-3-1 et  
11 seq., rules promulgated under that article, or".

12 On page 9, subsection 11.1, by striking out the  
13 subsection and inserting in lieu thereof a new subsection  
14 to read as follows: "11.1. **Suspension** - Upon service of a  
15 written notice of violation by the Director to a certified  
16 blaster, the Director may suspend his or her certification.  
17 Prior to the issuance of such an order, the certified  
18 blaster shall be granted a hearing before the Director to  
19 show cause why his or her certification should not be  
20 suspended."

21 On page 9, subsection 11.2, by striking out the phrase  
22 "or cessation order" in the first sentence.

23 On page 9, Section 12, by striking out the phrase  
24 "cessation order".

1       (r) The legislative rules filed in the state register  
2 on the fifteenth day of August, one thousand nine hundred  
3 ninety-four, authorized under the authority of section  
4 nine, article three, chapter twenty-two, of this code,  
5 modified by the division of environmental protection to  
6 meet the objections of the legislative rule-making review  
7 committee and refiled in the state register on the sixth  
8 day of January, one thousand nine hundred ninety-five,  
9 relating to the division of environmental protection (rules  
10 and regulations relating to abandoned mine lands and  
11 reclamation, 38 CSR 2D), are authorized.

12       (s) The Legislature hereby authorizes and directs the  
13 division of environmental protection to promulgate the  
14 legislative rules filed in the state register on February,  
15 seventh, one thousand nine hundred ninety-five, authorized  
16 under the authority of section five, article twenty,  
17 chapter sixteen, of this code, relating to the division of  
18 environmental protection (prevention and control of  
19 particulate air pollution from combustion of fuel in  
20 indirect heat exchangers, 45 CSR 2), effective the first  
21 day of May, one thousand nine hundred ninety-five, with the  
22 amendments set forth below:

23 On page eight, section 3.4(e) after the word "operated" by  
24 adding the words "at normal operating loads";

1 And,

2 On page thirteen, section 9.4 by striking the words  
3 "monthly or", and, following the words "quarterly basis" by  
4 striking the word "as"; and by inserting the words "unless  
5 otherwise" following the words "quarterly basis".

6 And,

7 On page thirteen, by creating a new section, designated  
8 section "45.2.10. Variances.

9 10.1. In the event of an unavoidable shortage of fuel  
10 having characteristics or specifications necessary for a  
11 fuel burning unit to comply with the opacity standards set  
12 forth in section 3 or any emergency situation or condition  
13 creating a threat to public safety or welfare, the Director  
14 may grant an exception to the otherwise applicable visible  
15 emission standards for a period not to exceed fifteen (15)  
16 days, provided that visible emissions during the exception  
17 period do not exceed a maximum six (6) minute average of  
18 thirty (30) percent and that a reasonable demonstration is  
19 made by the owner or operator that the emission standards  
20 under section 4 of this rule will not be exceeded during  
21 the exemption period."

22 10.2. In the event a fuel burning unit employing a  
23 flue gas desulphurization system must by-pass such system  
24 because of necessary planned or unplanned maintenance,

1 visible emissions may not exceed twenty percent (20%)  
2 opacity during such period of maintenance. The Director  
3 may require advance notice of necessary planned  
4 maintenance, including a description of the necessity of  
5 the maintenance activity and its expected duration and may  
6 limit the duration of the variance or the amount of the  
7 excess opacity exception herein allowed. The Director  
8 shall be notified of unplanned maintenance and may limit  
9 the duration of the variance or the amount of excess  
10 opacity exception allowed during unplanned maintenance.

11 And, by renumbering subsequent sections.

12 (t) The legislative rules filed in the state register  
13 on the nineteenth day of August, one thousand nine hundred  
14 ninety-four, authorized under the authority of section  
15 four, article three, chapter twenty-two, of this code,  
16 relating to the division of environmental protection  
17 (surface mining and reclamation regulations, 38 CSR 2), are  
18 authorized "with the amendments set forth below"

19 On pages 2 and 3, by striking out subsections 1.6, 1.7  
20 and 1.8 in their entirety;

21 On page 6, by inserting a new subsection 2.20, to read  
22 as follows, and renumbering subsequent subsections;

23 "Chemical Treatment means - the treatment of water  
24 from a surface coal mining operation using chemical

1 reagents such as but not limited to sodium hydroxide,  
2 calcium carbonate, or anhydrous ammonia for purposes of  
3 meeting applicable state and federal effluent limitations.  
4 Chemical treatment does not include passive treatment  
5 systems such as but not limited to limestone drains,  
6 wetlands, alkaline addition, application of flyash,  
7 agricultural lime, or injection of flyash, limestone, or  
8 other minerals into underground coal operations."

9 On page 16, section 2, by striking out subsection 2.92  
10 and renumbering the subsequent subsections.

11 On page 25, by striking the second paragraph of  
12 subsection 3.1 (o) and inserting in lieu thereof a new  
13 second paragraph 3.1 of subsection 3.1 (o), to read as  
14 follows: "Any permit application which references an  
15 approved centralized ownership and control file may be  
16 determined to be complete and accurate for the purposes of  
17 this subsection. Each centralized ownership and control  
18 file shall at a minimum:"

19 On page 63, by striking out subsection 3.25 (e).

20 On page 63, by striking out the first sentence in  
21 subsection 3.26, and inserting in lieu thereof the  
22 following:

23 "(a) All changes including name changes, replacements,  
24 and additions to the ownership or control data relative to

1 a permittee or assignee who will function as an operator  
2 pursuant to the provisions of paragraph (c) of subsection  
3 3.25 of this rule shall be reported to the Director."

4 On page 64, after subsection 3.26 (a) (5) by inserting  
5 a new subsection 3.26 (a) (6) to read as follows:

6 "(6) In the event that a permittee or operator has  
7 incurred no changes in its ownership and control  
8 information and therefore has not been obligated to file  
9 a report within any consecutive twelve-month period, that  
10 permittee or operator is required to notify the Director in  
11 writing that no changes to the information required by  
12 paragraphs (b), (c), (d) and (i) of subsection 3.1 of this  
13 rule have occurred."

14 On page 64, by striking out subsection 3.27 (a) and  
15 inserting in lieu thereof the following:

16 "(a) All active surface mining operations shall be  
17 subject to the renewal requirements and provisions for  
18 issuance of a renewal discussed in Section 19 of the Act:  
19 *Provided*, That the Director may waive the requirement for  
20 renewal if the permittee certifies in writing that all coal  
21 extraction is completed, that all backfilling and regrading  
22 will be completed within sixty (60) days prior to the  
23 expiration date of the permit, and that an application for  
24 Phase I bond release will be filed prior to the expiration

1 date of the permit. Failure of the permittee complete  
2 backfilling and regrading within sixty (60) days prior to  
3 the expiration date of the permit will nullify the waiver.

4 Those operations which have been granted inactive  
5 status in accordance with subsection 14.11 of this rule  
6 shall also be subject to the renewal requirements of  
7 Section 19 of the Act.

8 Applications for renewal shall be filed on forms  
9 provided by the Director and shall contain at a minimum the  
10 following information:"

11 On page 79, by striking out subsection 3.32 (i) and  
12 renumbering the remaining subsections.

13 On page 80, subsection 3.34 (b) after the word  
14 "criteria" by inserting the words "paragraph (b) of  
15 subsection 3.32 of this section";

16 On page 80, by striking out subsection 3.34 (b) (3)  
17 and substituting therefor a new subsection 3.34 (b) (3), to  
18 read as follows: "(3) The permittee was linked to a  
19 violation, penalty or fee through ownership or control,  
20 under the violation review criteria, paragraph (b) of  
21 subsection 3.32 of this section at the time the permit was  
22 issued and an ownership or control link between the  
23 permittee and the person responsible for the violation,  
24 penalty or fee still exists, or when the link was severed

1 the permittee continues to be responsible for the  
2 violation, penalty or fee."

3 On page 82, by striking out subsection 3.34 (g) and  
4 substituting therefor a new subparagraph (g) to read as  
5 follows:

6 "(g) For purposes of this subsection, a permit is  
7 issued when it is originally approved, as well as when a  
8 transfer, assignment, or sale of permit rights is approved  
9 pursuant to paragraphs (a) or (c), subsection 3.25 of this  
10 rule, or where a permit is revised pursuant to subsection  
11 3.26 of this rule."

12 On page 86, at the end of subsection 4.4, by adding  
13 the following sentence: "Prospecting roads are to be  
14 designed, constructed, maintained, and reclaimed in  
15 accordance with the provisions of subsection 13.6 of this  
16 rule."

17 On page 88, by inserting a new subsection 4.7 (a) (1)  
18 to read as follows: (1) Minimize downstream sedimentation  
19 and flooding and renumbering the remaining subsections.

20 On page 92, subsection 4.12, by inserting a new  
21 sentence between the second and third sentence which reads  
22 as follows: "Where the certification statement indicates a  
23 change from the design standards or construction  
24 requirements approved in the permit, such changes will be

1 documented in as-built plans and submitted for approval to  
2 the Director as a permit revision."

3 On Page 148, section 11.6 (a) in the underscored  
4 language, after the word, "completed" by inserting the  
5 words "or nearly completed".

6 On Page 223, by striking out subsection 14.14 (g) (8)  
7 and inserting in lieu thereof a new subsection 14.14 (g)  
8 (8), to read as follows: "(8) Surface water runoff from  
9 areas above and adjacent to the fill shall be diverted into  
10 properly designed and constructed stabilized diversion  
11 channels which have been designed using best current  
12 technology to safely pass the peak runoff from a 100 year,  
13 24-hour precipitation event. The channel shall be designed  
14 and constructed to ensure stability of the fill, control  
15 erosion, and minimize water infiltration into the fill."

16 On Page 232, by inserting a new subsection, designated  
17 subsection 14.19 (d) to read as follows: "(d) Timber from  
18 clearing and grubbing operations may be wind-rowed below  
19 the projected toe of the outslope in a manner that will  
20 provide shelter and habitat for game and non-game wildlife  
21 and provide for enhanced sediment control. These materials  
22 may not be placed in natural water courses or where they  
23 will be covered by spoil material at the toe of the  
24 outslope. The wind-rows must be of relatively uniform

1 height and width and must be more or less evenly  
2 distributed along the lower reaches and within the permit  
3 area."

4       On Page 240, subsection 17.1, in the first sentence,  
5 after the words "mining and reclamation," by striking out  
6 the remainder of the paragraph and substituting therefor  
7 the following: "required by the Act and these Rules,  
8 including the engineering analyses and designs; the  
9 development of cross-section maps and plans; the geologic  
10 drilling and statement of results of test borings and core  
11 samplings; preblast surveys; the collection of  
12 site-specific resource information and production of  
13 protection and enhancement plans for fish and wildlife  
14 habitats and other environmental values; and the collection  
15 of archaeological and historical information; and any other  
16 archaeological and historical information required by the  
17 federal department of the interior and the preparation of  
18 plans that may be necessitated thereby; and the director  
19 shall provide or assume the cost of training coal operators  
20 that meet the qualifications concerning the preparation of  
21 permit applications and compliance with the regulatory  
22 program, and shall ensure that qualified coal operators are  
23 aware of the assistance available under this section.

24       On Page 240, subsection 17.1, after the first

1 paragraph by inserting a new paragraph, to read as follows:  
2 "The Director will develop a procedure for the interstate  
3 coordination and exchange of information collected under  
4 the Small Operators Assistance Program."

5 On Page 241, by striking out subsection 17.4 in its  
6 entirety and substituting therefor the following: "17.4  
7 Request for Assistance. Each applicant requesting  
8 assistance shall provide information on forms provided by  
9 the director in an application that shall be clear and  
10 concise and shall be provided in a format prescribed by the  
11 Director and/or a format required by the Federal Office of  
12 Surface Mining Reclamation and Enforcement."

13 On Page 249, subsection 17.7 (a) (4), after the words  
14 "twelve (12) month period" by striking the remainder of the  
15 sentence and inserting in lieu thereof the words  
16 "immediately following permit issuance."

17 On page 273, subsection 20.6 (a), after the word  
18 "first" by striking out the words "thirty (30)" and  
19 inserting in lieu thereof the word "fifteen".

20 On page 273, subsection 20.6 (c), after the words  
21 "date of the" by striking out the words "Assessment Officer  
22 receiving the  
23 finding specified in paragraph (a) of this subsection." and  
24 inserting in lieu thereof the words "issuance of a notice

1 or order";

2 On page 274, subsection 20.6 (d), by striking out the  
3 first sentence, and inserting in lieu thereof the  
4 following: "The time and place of an informal assessment  
5 conference shall be posted at the Department of  
6 Environmental Protection Office nearest to the operation.

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

18

19 NOTE: The purpose of this bill is to authorize the  
20 Division of Environmental Protection to promulgate  
21 legislative rules relating to waste tire management.

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.~~



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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

(Plus all the volunteer  
help we can get)

TO: RICHARD P COOK

AGENCY: DEP - WASTE MGMT\WATER RESOURCES

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 10, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 38G TITLE: 47 DEP - WASTE MGMT\WATER RESOURCES

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: *Michael E...*

TITLE OF PERSON SIGNING: ERS III

DATE: 6-24-96

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.