

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

FILED

APR 25 3 49 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

Division of Environmental Protection
Office of Air Quality
AGENCY: _____ TITLE NUMBER: 45CSR34

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR34

TITLE OF RULE BEING AMENDED: Emission Standards for Hazardous Air
Pollutants Pursuant to 40 CFR Part 63

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

TITLE OF RULE BEING PROPOSED: _____

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

AUTHORIZATION IS CITED IN (house or senate bill number) HB 4224

SECTION 64-3-1(a), PASSED ON March 9, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 1, 1996


AUTHORIZED SIGNATURE

G. Dale Farley
Chief



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

(Plus all the volunteer
help we can get)

March 12, 1996

G. Dale Farley
DEP - Air Quality
1558 Washington Street East
Charleston, WV 25311

HB 4224 authorizing, **Title 45, Series 34, Emission Standards For Hazardous Air Pollutants Pursuant to 40 CFR Part 63** 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(a)**. 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



BUREAU OF ENVIRONMENT

10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

April 24, 1996

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

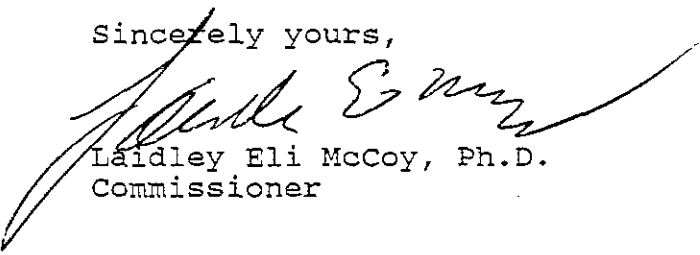
RE: 45CSR34 - "Emission Standards for Hazardous
"Air Pollutants"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office the above-captioned rule as final adoption of a legislative rule authorized by the West Virginia Legislature.

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

Sincerely yours,


Laidley Eli McCoy, Ph.D.
Commissioner

LEM:cc

Attachment

FILED

45CSR34

APR 25 3 49 PM '96

TITLE 45
LEGISLATIVE RULE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

SERIES 34
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
PURSUANT TO 40 CFR PART 63

§45-34-1. General.

1.1. Scope. - This rule establishes general provisions for national emission standards for hazardous air pollutants (NESHAPS) and other regulatory requirements pursuant to section 112 of the federal Clean Air Act as amended in 1990 (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the substances listed as hazardous air pollutants (HAP) in or pursuant to section 112(b) of the CAA. It is the intent of the Director to adopt these standards by reference. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to these standards.

1.2. Authority. - W.Va. Code §§22-5-1 et seq.

1.3. Filing Date. - April 25, 1996

1.4. Effective Date. - May 1, 1996

1.5. Incorporation by Reference - Federal Counterpart Regulation. The Director has determined that a federal counterpart regulation exists, and in accordance with the Director's recommendation, with limited exception, this rule incorporates by reference, 40 CFR Part 63, effective June 1, 1995.

§45-34-2. Requirements.

2.1. After the effective date of the state permit program under Title V of the CAA, no person may modify a major source of hazardous air pollutants, unless the Director determines that the maximum achievable control technology emission limitation under this rule for existing sources will be met.

2.2. After the effective date of the state permit program under Title V of the CAA, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Director determines that the maximum achievable control technology emission limitation under this rule for new sources will be met.

2.3. After the effective date of the state permit program under Title V of the CAA, the Director shall determine and apply case-by-case maximum achievable control technology standards to existing sources categorized by the Administrator pursuant to Section 112(c)(1) of the CAA for which the Administrator has not promulgated emission standards in accordance with Section 112(d) and 112(e) of the CAA.

2.4. Prior to constructing, reconstructing or modifying any facility subject to this rule, the owner or operator shall obtain a permit in accordance with the applicable requirements of 45CSR13, 45CSR14, 45CSR30 and this rule.

§45-34-3. Definitions.

3.1. "Administrator" shall mean the Administrator of the United States Environmental Protection Agency or his or her designated representative.

3.2. "Director" shall mean the Director of the West Virginia Division of Environmental Protection or his or her designated representative.

3.3. "Hazardous air pollutant" shall mean any air pollutant listed pursuant to §112(b) of the CAA as of June 1, 1995.

§45-34-4. Adoption of Standards.

4.1. The Director hereby adopts and incorporates by reference the provisions of 40 CFR Part 63 including any reference methods, performance specifications and other test methods which are appended to such standards and contained in 40 CFR Part 63 as in effect on June 1, 1995, for the purposes of implementing a program for national emission standards for hazardous air pollutants for source categories, except as follows:

4.1.a. Section 63.15 is amended to provide that information shall be available to the public in accordance with W.Va. Code §§22-5-1 et seq. and 29B-1-1 et seq.

4.1.b. Any provision related to section 112(r) of the CAA.

4.1.c. Section 63.150 is excluded from adoption.

§45-34-5. Director.

5.1. Any and all references in 40 CFR Part 63 to the "Administrator" are amended to be the "Director" except in the following references which shall remain "Administrator."

5.1.a. Part 63.1(a)(2)

5.1.b. Part 63.1(a)(3)

5.1.c. Part 63.1(b)(2)

5.1.d. Part 63.1(c)(2)(ii)

5.1.e. Part 63.2 pertaining to the definition of:

Administrator

Alternative Emission Limitation

Alternative Emission Standard

Alternative Test Method

Approved Permit Program

Equivalent Emission Limitation

Federally Enforceable

Lesser Quantities

Major Source

Performance Audit

Permitting Authority

Regulation Promulgation Schedule

Responsible Official

5.1.f. Part 63.5(b)(4)

5.1.g. Part 63.5(b)(5)

- 5.1.h. Part 63.6(g)(1)
- 5.1.i. Part 63.6(g)(3)
- 5.1.j. Part 63.6(h)(9)
- 5.1.k. Part 63.7(c)(4)(iii)
- 5.1.l. Part 63.9(a)(3)
- 5.1.m. Part 63.9(b)(2)
- 5.1.n. Part 63.9(b)(3)
- 5.1.o. Part 63.9(b)(4)
- 5.1.p. Part 63.9(b)(5)
- 5.1.q. Part 63.9(c)
- 5.1.r. Part 63.9(d)

5.1.s. Part 63.9(i), depending upon whether the Administrator or the Director has responsibility for administering the applicable section of the rule.

5.1.t. Part 63.9(j), depending upon whether the Administrator or the Director has responsibility for administering the applicable section of the rule.

- 5.1.u. Part 63.10(a)(3)
- 5.1.v. Part 63.10(b)(3)
- 5.1.w. Part 63.12(b)(1)
- 5.1.x. Part 63.12(c)
- 5.1.y. Part 63.13(a)
- 5.1.z. Part 63.13(b)
- 5.1.aa. Part 63.52(a)
- 5.1.ab. Part 63.56
- 5.1.ac. Part 63.100 (l)(1)(iii)

5.1.ad. Part 63.101(a)

5.1.ae. Part 63.102(a)(2)(b)

5.1.af. Part 63.102(b)(3)

5.1.ag. Part 63.103(d), pertaining to the second occurrence of "Administrator".

5.1.ah. Part 63.106(a)

5.1.ai. Part 63.111(4) pertaining to the use of "Administrator" in the definition of "maximum true vapor pressure."

5.1.aj. Part 63.191(a)

5.1.ak. Part 63.192(h)

5.1.al. Part 63.193

5.1.am. Part 63.301

5.1.an. Part 63.302(a)(2)

5.1.ao. Part 63.304(b)(3)

5.1.ap. Part 63.304(d)

5.1.aq. Part 63.307(e)(1)

5.1.ar. Part 63.311(g)(2)

5.1.as. Part 63.313

5.1.at. Part 63.321

5.1.au. Part 63.325(a)

5.1.av. Part 63.325(b)

5.1.aw. Part 63.325(c)

5.1.ax. Part 63.342 pertaining to the use of "Administrator" in Table 1 to 63.342

5.1.ay. Part 63.342(f)(3)(i)(c)

5.1.az. Part 63.343(c)(8)(ii)

5.1.ba. Part 63.343(d)

5.1.bb. Part 63.344(c)(4)

5.1.bc. Part 63.347(a)

5.1.bd. Part 63.347(c)(1)

5.1.be. Reference 63.8(F)(2) of Table 1 to Subpart N

5.1.bf. Part 63 Appendix A Method 306A Section 5.1.1.2.b

5.1.bg. Part 63.366(a)

5.1.bh. Part 63.366(a)(1)(ii)

5.1.bi. Part 63.366(a)(2)

5.1.bj. Part 63.401(3), pertaining to the second occurrence of "Administrator" in the definition of "Responsible Official."

5.1.bk. Part 63.404

5.1.bl. Part 63.428(h)

5.1.bm. Part 63.429(a)

5.1.bn. Part 63.460(e)

5.1.bo. Part 63.461 pertaining to the definition of "Administrator"

5.1.bp. Reference 63.2 of Appendix C to Subpart T

5.1.bq. Part 63.522 (three times in one sentence)

5.1.br. Part 63.703(h)(3)

5.1.bs. Part 63.707(a)

5.1.bt. Part 63.708(a)

§45-34-6. Permits.

6.1. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall in any way be limited or inapplicable.

§45-34-7. Inconsistency Between Rules.

7.1. In the event of any inconsistency between this rule and any other existing rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method, rule or regulation.

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SENATE BILL NO. 240

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

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

NATURAL RESOURCES

THE JUDICIARY

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 emission standards for hazardous air pollutants
16 pursuant to 40 CFR Part 63.

17 Be it enacted by the Legislature of West Virginia:

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

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

24 §64-3-1. Division of environmental protection.

1 (a) 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 (requirements for determining conformity of
11 general federal actions to applicable air quality
12 implementation plans (general conformity), 45 CSR 35), are
13 authorized.

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

1 34), are authorized.

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

14 "On page two, section 4, subsection 4.1, subdivision
15 4.1.i, by striking out 'Part 60.195(b)' and inserting in
16 lieu thereof 'Part 60.194(d)';

17 On page two, section 4, subsection 4.1., subdivision
18 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
19 in lieu thereof 'Part 60.335(f)(1)';

20 And,

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

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

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

1 on the fifteenth 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 nineteenth day of December, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (permits for construction and major modification
10 of major stationary sources of air pollution for the
11 prevention of significant deterioration, 45 CSR 14), are
12 authorized.

13 (e) 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 (requirements for determining conformity of
23 transportation plans, programs and projects developed,
24 funded or approved under title 23 U.S.C. or the federal

1 transit act, to applicable air quality implementation
2 plans, 45 CSR 36), are authorized.

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

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

1 hazardous waste treatment, storage or disposal facilities,
2 45 CSR 25), are authorized.

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

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

1 (j) 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 (provisions for determination of compliance with
11 air quality management rules, 45 CSR 38), are authorized.

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

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

1 ninety-four, authorized under the authority of section
2 four, article fourteen, 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 fourth
6 day of January, one thousand nine hundred ninety-five,
7 relating to the division of environmental protection (dam
8 safety, 47 CSR 34), are authorized with the amendments set
9 forth below:

10 On page 9, section §47-34-3, by striking out
11 3.5.2.c.A, and substituting therefor the following:

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

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

17 "The design precipitation for a Class 3 dam may be
18 reduced based on Risk Assessment pursuant to paragraph
19 3.5.4 of this rule, but in no case to less than a P100
20 rainfall of six (6) hours in duration."

21 On page 40, section §47-34-13, by striking out section
22 13.2 and substituting therefor the following:

23 "Performance Requirements - All dams completed before
24 July 1, 1973, shall meet the applicable design requirements

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

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

1 day of January, one thousand nine hundred ninety-five,
2 relating to the division of environmental protection
3 (regulations governing environmental laboratories
4 certification and standards of performance, 47 CSR 32), are
5 authorized.

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

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

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

1 ninety-four, authorized under the authority of section six,
2 article eighteen, 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 thirteenth day of January, one thousand nine hundred
7 ninety-five, relating to the division of environmental
8 protection (hazardous waste management regulations, 47 CSR
9 35), are authorized.

10 (q) The legislative rules filed in the state register
11 on the twenty-second day of July, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 four, article three, chapter twenty-two, 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-ninth day of August, one thousand nine hundred
18 ninety-four, relating to the division of environmental
19 protection (standards for certification of blasters-surface
20 coal mines, 38 CSR 2C), are authorized with the amendments
21 set forth below:

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

1 "In lieu of completing the training program, the
2 applicant for certification or re-certification may
3 complete a self-study course using the study guide and
4 other materials available from the Division of
5 Environmental Protection."

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

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

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

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

1 On page 9, Section 12, by striking out the phrase
2 "cessation order".

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

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

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

3 And,

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

8 And,

9 On page thirteen, by creating a new section, designated
10 section "45.2.10. Variances.

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

24 10.2. In the event a fuel burning unit employing a

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

13 And, by renumbering subsequent sections.

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

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

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

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

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

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

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

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

1 "(a) All changes including name changes, replacements,
2 and additions to the ownership or control data relative to
3 a permittee or assignee who will function as an operator
4 pursuant to the provisions of paragraph (c) of subsection
5 3.25 of this rule shall be reported to the Director."

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

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

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

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

1 expiration date of the permit, and that an application for
2 Phase I bond release will be filed prior to the expiration
3 date of the permit. Failure of the permittee complete
4 backfilling and regrading within sixty (60) days prior to
5 the expiration date of the permit will nullify the waiver.

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

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

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

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

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

1 permittee and the person responsible for the violation,
2 penalty or fee still exists, or when the link was severed
3 the permittee continues to be responsible for the
4 violation, penalty or fee."

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

8 "(g) For purposes of this subsection, a permit is
9 issued when it is originally approved, as well as when a
10 transfer, assignment, or sale of permit rights is approved
11 pursuant to paragraphs (a) or (c), subsection 3.25 of this
12 rule, or where a permit is revised pursuant to subsection
13 3.26 of this rule."

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

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

22 On page 92, subsection 4.12, by inserting a new
23 sentence between the second and third sentence which reads
24 as follows: "Where the certification statement indicates a

1 change from the design standards or construction
2 requirements approved in the permit, such changes will be
3 documented in as-built plans and submitted for approval to
4 the Director as a permit revision."

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

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

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

1. will be covered by spoil material at the toe of the
2 outslope. The wind-rows must be of relatively uniform
3 height and width and must be more or less evenly
4 distributed along the lower reaches and within the permit
5 area."

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

1 aware of the assistance available under this section.

2 On Page 240, subsection 17.1, after the first
3 paragraph by inserting a new paragraph, to read as follows:
4 "The Director will develop a procedure for the interstate
5 coordination and exchange of information collected under
6 the Small Operators Assistance Program."

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

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

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

22 On page 273, subsection 20.6 (c), after the words
23 "date of the" by striking out the words "Assessment Officer
24 receiving the

1 finding specified in paragraph (a) of this subsection." and
2 inserting in lieu thereof the words "issuance of a notice
3 or order";

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

9

10 NOTE: The purpose of this bill is to authorize the
11 Division of Environmental Protection to promulgate
12 legislative rules relating to emission standards for
13 hazardous air pollutants pursuant to 40 CFR Part 63.

14

15 ~~Strike-throughs indicate language that would be~~
16 ~~stricken from the present law, and underscoring indicates~~
17 ~~new language that would be added.~~

4224

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H. B. 4224

(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)
(Introduced January 29, 1996 ; referred to the
Committee on the Judiciary .)

45-34

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 emission standards for hazardous air pollutants pursuant to 40 CFR Part 63.

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.

4224

1 (a) 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 (requirements for determining conformity of
11 general federal actions to applicable air quality
12 implementation plans (general conformity), 45 CSR 35), are
13 authorized.

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

1 34), are authorized.

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

14 "On page two, section 4, subsection 4.1, subdivision
15 4.1.i, by striking out 'Part 60.195(b)' and inserting in
16 lieu thereof 'Part 60.194(d)';

17 On page two, section 4, subsection 4.1., subdivision
18 4.1.k, by striking out 'Part 60.335(a)(1)(i)' and inserting
19 in lieu thereof 'Part 60.335(f)(1)';

20 And,

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

23 'l. Part 60.335(f)(1).'"

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

1 on the fifteenth 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 nineteenth day of December, one thousand nine hundred
8 ninety-four, relating to the division of environmental
9 protection (permits for construction and major modification
10 of major stationary sources of air pollution for the
11 prevention of significant deterioration, 45 CSR 14), are
12 authorized.

13 (e) 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 (requirements for determining conformity of
23 transportation plans, programs and projects developed,
24 funded or approved under title 23 U.S.C. or the federal

1 transit act, to applicable air quality implementation
2 plans, 45 CSR 36), are authorized.

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

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

1 hazardous waste treatment, storage or disposal facilities,
2 45 CSR 25), are authorized.

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

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

1 (j) 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 (provisions for determination of compliance with
11 air quality management rules, 45 CSR 38), are authorized.

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

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

1 ninety-four, authorized under the authority of section
2 four, article fourteen, 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 fourth
6 day of January, one thousand nine hundred ninety-five,
7 relating to the division of environmental protection (dam
8 safety, 47 CSR 34), are authorized with the amendments set
9 forth below:

10 On page 9, section §47-34-3, by striking out
11 3.5.2.c.A, and substituting therefor the following:

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

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

17 "The design precipitation for a Class 3 dam may be
18 reduced based on Risk Assessment pursuant to paragraph
19 3.5.4 of this rule, but in no case to less than a P100
20 rainfall of six (6) hours in duration."

21 On page 40, section §47-34-13, by striking out section
22 13.2 and substituting therefor the following:

23 "Performance Requirements - All dams completed before
24 July 1, 1973, shall meet the applicable design requirements

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

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

1 day of January, one thousand nine hundred ninety-five,
2 relating to the division of environmental protection
3 (regulations governing environmental laboratories
4 certification and standards of performance, 47 CSR 32), are
5 authorized.

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

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

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

1 ninety-four, authorized under the authority of section six,
2 article eighteen, 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 thirteenth day of January, one thousand nine hundred
7 ninety-five, relating to the division of environmental
8 protection (hazardous waste management regulations, 47 CSR
9 35), are authorized.

10 (g) The legislative rules filed in the state register
11 on the twenty-second day of July, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 four, article three, chapter twenty-two, 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-ninth day of August, one thousand nine hundred
18 ninety-four, relating to the division of environmental
19 protection (standards for certification of blasters-surface
20 coal mines, 38 CSR 2C), are authorized with the amendments
21 set forth below:

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

1 "In lieu of completing the training program, the
2 applicant for certification or re-certification may
3 complete a self-study course using the study guide and
4 other materials available from the Division of
5 Environmental Protection."

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

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

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

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

1 On page 9, Section 12, by striking out the phrase
2 "cessation order".

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

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

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

3 And,

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

8 And,

9 On page thirteen, by creating a new section, designated
10 section "45.2.10. Variances.

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

24 10.2. In the event a fuel burning unit employing a

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

13 And, by renumbering subsequent sections.

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

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

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

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

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

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

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

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

1 "(a) All changes including name changes, replacements,
2 and additions to the ownership or control data relative to
3 a permittee or assignee who will function as an operator
4 pursuant to the provisions of paragraph (c) of subsection
5 3.25 of this rule shall be reported to the Director."

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

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

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

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

1 expiration date of the permit, and that an application for
2 Phase I bond release will be filed prior to the expiration
3 date of the permit. Failure of the permittee complete
4 backfilling and regrading within sixty (60) days prior to
5 the expiration date of the permit will nullify the waiver.

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

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

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

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

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

1 permittee and the person responsible for the violation,
2 penalty or fee still exists, or when the link was severed
3 the permittee continues to be responsible for the
4 violation, penalty or fee."

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

8 "(g) For purposes of this subsection, a permit is
9 issued when it is originally approved, as well as when a
10 transfer, assignment, or sale of permit rights is approved
11 pursuant to paragraphs (a) or (c), subsection 3.25 of this
12 rule, or where a permit is revised pursuant to subsection
13 3.26 of this rule."

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

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

22 On page 92, subsection 4.12, by inserting a new
23 sentence between the second and third sentence which reads
24 as follows: "Where the certification statement indicates a

1 change from the design standards or construction
2 requirements approved in the permit, such changes will be
3 documented in as-built plans and submitted for approval to
4 the Director as a permit revision."

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

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

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

1 will be covered by spoil material at the toe of the
2 outslope. The wind-rows must be of relatively uniform
3 height and width and must be more or less evenly
4 distributed along the lower reaches and within the permit
5 area."

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

1 aware of the assistance available under this section.

2 On Page 240, subsection 17.1, after the first
3 paragraph by inserting a new paragraph, to read as follows:
4 "The Director will develop a procedure for the interstate
5 coordination and exchange of information collected under
6 the Small Operators Assistance Program."

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

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

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

22 On page 273, subsection 20.6 (c), after the words
23 "date of the" by striking out the words "Assessment Officer
24 receiving the

1 finding specified in paragraph (a) of this subsection." and
2 inserting in lieu thereof the words "issuance of a notice
3 or order";

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

9
10 NOTE: The purpose of this bill is to authorize the
11 Division of Environmental Protection to promulgate
12 legislative rules relating to emission standards for
13 hazardous air pollutants pursuant to 40 CFR Part 63.

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

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(Plus all the volunteer
help we can get)

TO: G. Dale Farley

AGENCY: DEP-Air Quality

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 11, 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: 34 TITLE: 45 DEP-Air Quality

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

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

SIGNED: Danra S. Maurer

TITLE OF PERSON SIGNING: Administrative Secretary

DATE: October 25, 1996

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