

**WEST VIRGINIA**  
**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #6

Do Not Mark in this box

**FILED**

APR 28 3 45 PM '95

OFFICE OF THE SECRETARY OF STATE

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

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

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 45CSR34

TITLE OF RULE BEING PROPOSED: Emission Standards for Hazardous Air

Pollutants Pursuant to 40 CFR Part 63

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

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 2134

SECTION 64-3-1-(b), PASSED ON March 10, 1995

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: May 1, 1995

*Roger T Hall*  
AUTHORIZED SIGNATURE

Roger Hall

# LEGISLATIVE HISTORY ABSTRACT

## 45CSR34

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

Bureau of Environment  
Division of Environmental Protection  
Office of Air Quality  
House Bill 2134, Section 64-3-1(b)

- 06/21/94 Filed Notice of Public Hearing with Secretary of State.
- 06/21/94 Initial Filing with Legislative Rule-Making Review Committee.
- 07/29/94 Held Public Hearing.
- 07/29/94 End of Public Comment Period.
- 08/12/94 Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
- 11/13/94 Hearing Before the Legislative Rule-Making Review Committee.
- 11/13/94 Rule Approved by Legislative Rule-Making Review Committee with Modifications.
- 11/14/94 Legislative Rule-Making Review Committee Recommends that the Legislature Authorize the Agency to Promulgate 45CSR34 as Modified.
- 11/23/94 Modified Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
- 03/10/95 Passed the West Virginia Legislature.
- 03/24/95 Approved by the Governor.
- 04/30/95 Rule Final Filed with Secretary of State.
- 05/01/95 Effective Date of Rule.

TITLE 45  
LEGISLATIVE RULE  
BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

FILED

Nov 23 9 15 AM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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. -

1.4. Effective Date. -

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.

**§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.

3.2. "Director" shall mean the Director of the West Virginia Division of Environmental Protection.

3.3. "Hazardous air pollutant" shall mean any air pollutant listed pursuant to §112(b) of the CAA as July 1, 1994.

**§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 July 1, 1994, for the purposes of implementing a program for national emission standards for hazardous air pollutants for source categories, except as follows:

4.1.a. Part 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. Part 63.150 is excluded from adoption.

**§45-34-5. Director.**

5.1. Any and all references in 40 CFR Part 63 to the "Administrator" is 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

45CSR34

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)(i)
- 5.1.i. Part 63.6(g)(9)(i)
- 5.1.j. Part 63.6(g)(9)(ii)
- 5.1.k. Part 63.6(h)(9)
- 5.1.l. Part 63.7(c)(4)(iii)
- 5.1.m. Part 63.9(a)(3)
- 5.1.n. Part 63.9(a)(3)
- 5.1.o. Part 63.10(3)
- 5.1.p. Part 63.12(b)(1)
- 5.1.q. Part 63.12(c)
- 5.1.r. Part 63.13(a)
- 5.1.s. Part 63.13(b)

45CSR34

- 5.1.t. Part 63.52(a)
- 5.1.u. Part 63.56
- 5.1.v. Part 63.100 (1)(1)(iii)
- 5.1.w. Part 63.101(a)
- 5.1.x. Part 63.102(a)(2)(b)
- 5.1.y. Part 63.102(b)(3)
- 5.1.z. Part 63.103(b)(3)(d), pertaining to the second occurrence of the definition of Administrator.
- 5.1.aa. Part 63.106(a)
- 5.1.ab. Part 63.111(4) pertaining to the definition of Administrator
- 5.1.ac. Part 63.150(c)(3)
- 5.1.ad. Part 63.150(c)(5)(ii)
- 5.1.ae. Part 63.191(a)
- 5.1.af. Part 63.192(d)(2)(e)
- 5.1.ag. Part 63.192(g)(2)(h)
- 5.1.ah. Part 63.193
- 5.1.ai. Part 63.301
- 5.1.aj. Part 63.302(a)(2)
- 5.1.ak. Part 63.304(b)(3)
- 5.1.al. Part 63.304(d)
- 5.1.am. Part 63.307(e)(1)
- 5.1.an. Part 63.311(g)(2)
- 5.1.ao. Part 63.313
- 5.1.ap. Part 63.321
- 5.1.aq. Part 63.325(a)
- 5.1.ar. Part 63.325(b)

5.1.as. Part 63.325(c)

**§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.

45-34

Bill-DEP, Emission Part 63

OSIE

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H. B. 2150

(By Delegates Gallagher, Douglas, Compton,  
Linch, Faircloth and Riggs )  
(Introduced January 23, 1995 ; referred to the  
Committee on the Judiciary .)

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

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

17 That chapter sixty-four of the code of West Virginia, one  
18 thousand nine hundred thirty-one, as amended, be amended by  
19 adding thereto a new article, designated article three-b, to read  
20 as follows:

21 **ARTICLE 3B. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO**  
22 **PROMULGATE LEGISLATIVE RULES.**

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



1       The legislative rules filed in the state register on the  
2 twelfth day of August, one thousand nine hundred ninety-four,  
3 modified by the division of environmental protection to meet the  
4 objections of the legislative rule-making review committee and  
5 refiled in the state register on the twenty-third day of  
6 November, one thousand nine hundred ninety-four, relating to the  
7 division of environmental protection (emission standards for  
8 hazardous air pollutants pursuant to 40 CFR Part 63), are  
9 authorized.

10

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

15

16       This section is new; therefore, strike-throughs and  
17 underscoring have been omitted.

SENATE BILL NO. 66

(By Senators Anderson, Boley, Grubb and Macnaughtan)

[Introduced January 20, 1995; referred to the Committee on Natural Resources; then to the Committee on Finance; and then to the Committee on the Judiciary]

45-34

8

9

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22 **PROMULGATE LEGISLATIVE RULES.**

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11       NOTE: The purpose of this bill is to authorize the Division  
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13 relating to emission standards for hazardous air pollutants  
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15

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17 underscoring have been omitted.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 558-6000  
Corporations: (304) 558-8000



## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

FAX: (304) 558-0900

March 29, 1995

Tammy Mowrer  
DEP-Air Quality  
1558 Washington St. E.  
Charleston, WV 25311

**HB 2134** authorizing, **Title 45, Series 34, Emission standards for hazardous air pollutants pursuant to 40 CFR part 63**, passed the Legislature on **March 10, 1995**. It was signed by the Governor on March 24, 1995.

You have sixty (60) days after the Governor signs HB 2134, 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 2134** section **64-3-1(b)**. 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: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, 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 call our office.

Thank You  
Administrative Law Division



**BUREAU OF ENVIRONMENT**  
10 McJUNKIN ROAD  
NITRO, WV 25143-2506

GASTON CAPERTON  
GOVERNOR

DAVID C. CALLAGHAN  
COMMISSIONER

April 26, 1995

Ms. Judy Cooper  
Director, Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
Charleston, West Virginia 25305

RE: 45 CSR 34 - Emission Standards for Hazardous  
Air Pollution - Part 63

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned rule as a final filing and 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,

A handwritten signature in black ink, appearing to read "D. Callaghan".

David C. Callaghan  
Commissioner  
Bureau of Environment

DCC;RTH:cc

Attachment

KEN HECHLER  
Secretary of State  
  
MARY P. RATLIFF  
Deputy Secretary of State  
  
STEPHEN N. REED  
Deputy Secretary of State  
  
CATHERINE FREROTTE  
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Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900



DIV OF ENVIR. PROTECT.  
OFFICE OF AIR QUALITY

1995 AUG 30 A 11: 04

**STATE OF WEST VIRGINIA**  
**SECRETARY OF STATE**  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON  
Chief of Staff  
  
JUDY COOPER  
Director, Administrative Law  
  
PENNEY BARKER  
Supervisor, Corporations

(Plus all the volunteer  
help we can get)

TO: Tammy Mowrer

AGENCY: DEP- Air Quality

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: August 28, 1995

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: Tammy S. Mowrer

TITLE OF PERSON SIGNING: Administrative Secretary

DATE: November 28, 1995

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