

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #6

Do Not Mark In This Box

FILED

MAY 1 3 36 PM '98

OFFICE OF WEST VIRGINIA
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: 45

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 34

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: _____

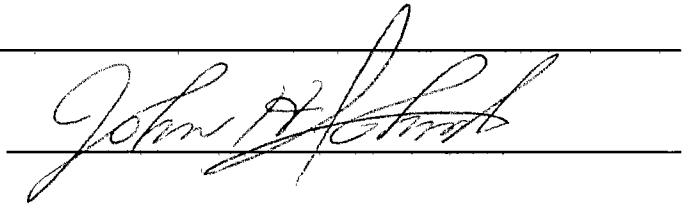
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) H. B. 4136

SECTION W. Va. Code §64-3-1 , PASSED ON March 14, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: May 1, 1998



\$2.60



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

May 1, 1998

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

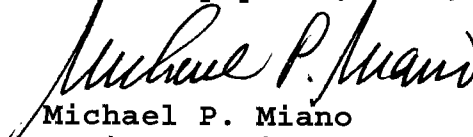
RE: 45CSR34 - "Emission Standards for Hazardous
Air Pollutants Pursuant to 40 CFR
Part 63"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your office as a final rule authorized by HB 4136, signed by Governor Underwood April 2, 1998.

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

Sincerely yours,


Michael P. Miano
Assistant Director

JEC:cc

Attachment

cc: Karen Watson, OAQ

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 4136 Section 64-3-1

06/17/97 Filed Notice of Public Hearing with Secretary of State.

06/17/97 Initial Filing with Legislative Rule-Making Review Committee.

07/21/97 Held Public Hearing.

07/21/97 End of Public Comment Period.

08/01/97 Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.

11/18/97 Rule Approved by Legislative Rule-Making Review Committee.

03/14/98 Passed the West Virginia Legislature.

04/02/98 Approved by the Governor.

05/01/98 Rule Final Filed with Secretary of State.

05/01/98 Effective Date of Rule.

FILED

45CSR34

MAY 1 3 36 PM '98

TITLE 45
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION OFFICE OF WEST VIRGINIA
OFFICE OF AIR QUALITY 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. -- May 1, 1998

1.4. Effective Date. -- May 1, 1998

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, 1997.

§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" means the Administrator of the United States Environmental Protection Agency or his or her designated representative.

3.2. "Director" means the Director of the West Virginia Division of Environmental Protection or such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

3.3. "Hazardous air pollutant" means any air pollutant listed pursuant to §112(b) of the CAA as of June 1, 1997.

§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, 1997, 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., §§29B-1-1 et seq., and 45CSR31.

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

§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 as follows:

5.1.a. where the federal regulations specifically provide that the Administrator shall retain authority and not transfer such authority to the State.

5.1.b. where provisions occur which refer to:

- b.1. alternate means of emission limitations
- b.2. alternate control technologies
- b.3. innovative technology waivers
- b.4. alternate test methods
- b.5. alternate monitoring methods
- b.6. waivers/adjustments to recordkeeping and reporting
- b.7. emissions averaging
- b.8. applicability determinations

5.1.c. where the context of the regulation clearly requires otherwise.

§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

Senate Bill No. 286

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

[Introduced January 30, 1998; referred to the
Committee on Natural Resources; and then to the
Committee on 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 a legislative rule relating
15 to emission standards for hazardous air pollutants.

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 TO
22 PROMULGATE LEGISLATIVE RULES.

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

1 (a) The legislative rule filed in the state register
2 on the thirtieth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section six,
4 article eighteen, chapter twenty-two of this code, relating
5 to the division of environmental protection (hazardous
6 waste management, 33 CSR 20), is authorized.

7 (b) The legislative rule filed in the state register
8 on the twenty-ninth day of August, one thousand nine
9 hundred ninety-six, authorized under the authority of
10 section four, article five, chapter twenty-two of this
11 code, relating to the division of environmental protection
12 (standards of performance for new stationary sources
13 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

14 (c) The legislative rule filed in the state register
15 on the ~~twenty-ninth~~ first day of August, one thousand nine
16 hundred ~~ninety-six~~ ninety-seven, authorized under the
17 authority of section ~~four~~ seven, article five, chapter
18 twenty-two of this code, relating to the division of
19 environmental protection (emission standards for hazardous
20 air pollutants pursuant to 40 CFR Part 63, 45 CSR 34), is
21 authorized.

22 (d) The legislative rule filed in the state register
23 on the twenty-eighth day of August, one thousand nine

1 hundred ninety-six, authorized under the authority of
2 section six, article seventeen, chapter twenty-two of this
3 code, modified by the division of environmental protection
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 twenty-second day of October, one thousand nine hundred
7 ninety-six, relating to the division of environmental
8 protection (underground storage tank insurance trust fund,
9 33 CSR 32), is authorized.

10 (e) The legislative rule filed in the state register
11 on the twenty-ninth day of August, one thousand nine
12 hundred ninety-six, authorized under the authority of
13 section three, article one, chapter twenty-two of this
14 code, modified by the division of environmental protection
15 to meet the objections of the legislative rule-making
16 review committee and refiled in the state register on the
17 twentieth day of December, one thousand nine hundred
18 ninety-six, relating to the division of environmental
19 protection (WV/NPDES regulations for coal mining
20 facilities, 47 CSR 30), is authorized.

21 (f) The legislative rule filed in the state register
22 on the thirtieth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section four,

1 article three, chapter twenty-two of this code, modified by
2 the division of environmental protection to meet the
3 objections of the legislative rule-making review committee
4 and refiled in the state register on the twenty-first day
5 of February, one thousand nine hundred ninety-seven,
6 relating to the division of environmental protection
7 (surface mining and reclamation regulations, 38 CSR 2), is
8 authorized, with the following amendments:

9 "On page three, subsection 2.4, by striking out the
10 words "Coal seams commonly associated with such minerals
11 may include, but are not limited to Waynesburg, Washington,
12 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk
13 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
14 Stockton Lewiston";

15 On page three, subsection 2.4, line eight, by striking
16 out the words "these seams are", and inserting in lieu
17 thereof the words "the seam is";

18 On page nine, subsection 2.43, line two, after the
19 word "highwall", by inserting the words "except in
20 operations where the entire upper horizon above the lowest
21 coal seam is proposed to be partly or entirely removed";

22 On page sixteen, subsection 2.95, line seven after
23 the "any", by inserting the word "substantial";

1 On page eighteen, subsection 2.108, line two, after
2 the word "stream." by adding the following: Examples
3 include wildlife ponds, settling basins and all ponds and
4 facilities or structures used for water treatment.;

5 On page nineteen, subsection 2.120, line three, by
6 striking the word "or" and inserting in lieu thereof the
7 word "and";

8 On page twenty-nine, subsection 3.2.e., after the word
9 "period" by striking the remainder of the subdivision
10 3.2.e.;

11 On page forty-nine, subsection 3.14.b.7., by striking
12 the entire paragraph;

13 On page forty-nine, subsection 3.14.b.8., by striking
14 the entire paragraph;

15 On page forty-nine, by renumbering the remaining
16 paragraphs;

17 On page fifty-one, subparagraph 3.14.b.14E, line one,
18 before the word "A", by inserting the words "If requested
19 by the Director";

20 On page fifty-one, subsection 3.14.b.15.B., by
21 striking the entire subparagraph, and inserting in lieu
22 thereof the following: 3.14.b.15.B. Surface water must be
23 diverted around or over the material by properly designed

1 and stabilized diversion channels which have been designed
2 using the best current technology to provide protection to
3 the environment or the health, welfare and safety of the
4 public. The channel shall be designed and constructed to
5 ensure stability of the remaining material, control
6 erosion, and minimize water infiltration into the remaining
7 material.;

8 On page seventy-two, subdivision 3.29.a, line five
9 after the word "IBR", by inserting the words "or where it
10 has been demonstrated to the satisfaction of the Director
11 that limited coal removal on areas immediately adjacent to
12 the existing permit is the only practical alternative to
13 recovery of unanticipated reserves or necessary to enhance
14 reclamation efforts or environmental protection";

15 On page eighty-six, by inserting a new subsection 3.35
16 to read as follows: 3.35. All grade measurements and
17 linear measurements in this rule shall be subject to a
18 tolerance of two percent (2%). All angles in this rule
19 shall be measured from the horizontal and shall be subject
20 to a tolerance of five percent (5%): *Provided, however,*
21 *this allowable deviation from the approved plan does not*
22 *affect storage capacity and/or performance standards.*

23 On page one hundred eight, subdivision 5.5.c., line

1 two, after the word "landowner", by striking the remainder
2 of the paragraph and inserting in lieu thereof the words
3 "requesting the permanent structures be left for
4 recreational or wildlife propagation purposes or for any
5 beneficial uses to the landowner";

6 On page one hundred twelve, subdivision 6.5.a., line
7 five, after the word "Sunday." by adding the following:
8 *Provided, however,* the Director may grant approval of a
9 request for Sunday blasting if the operator demonstrates to
10 the satisfaction of the Director that the blasting is
11 necessary and there has been an opportunity for a public
12 hearing.;

13 On page one hundred twenty-six, paragraph 9.2.i.2,
14 after the word "achieved" by inserting: An alternate
15 maximum or minimum soil pH may be approved based on the
16 optimum pH for the revegetation species.;

17 On page one hundred thirty, line one, paragraph
18 9.3.h.1., by striking out the paragraph in its entirety,
19 and inserting in lieu thereof: 9.3.h.1. The minimum
20 stocking rate of commercial tree species shall be in
21 accordance with the approved forest management plan
22 prepared by a registered professional forester. In no case
23 may the rate be less than four hundred fifty (450) stems

1 per acre of commercial tree species;

2 On page one hundred thirty, paragraph 9.3.h.2., by
3 striking out the paragraph in its entirety, and by
4 renumbering the subsequent paragraphs;

5 On page one hundred thirty, in renumbered paragraph
6 9.3.h.2., after the word "than", by striking out the words
7 "four hundred fifty (450)", and inserting in lieu thereof
8 "three hundred (300);" On page one hundred thirty, in
9 renumbered paragraph 9.3.h.2., after the word "acre", by
10 inserting the words "or the rate specified in the forest
11 management plan, whichever is greater,";

12 On page two hundred twenty-two, subdivision 14.11.e,
13 line 6, by striking out the word "operable" and by
14 inserting in lieu thereof "such condition that operations
15 could be resumed within sixty (60) days";

16 On page two hundred twenty-three, subdivision
17 14.11.f., line four, by striking out the word "operative",
18 and by inserting in lieu thereof the words "such condition
19 that the operations could be resumed within sixty (60)
20 days";

21 On page two hundred twenty-three, subdivision
22 14.11.f., line four, after the word "is", by inserting the
23 words "protected from unauthorized entry";

1 On page two hundred thirty-eight, subparagraph
2 14.15.b.6.A., line five, after the word "exceed", by
3 striking out the words "fifty (50) percent of the total
4 permit acreage, or four hundred (400) acres, whichever is
5 less, on operations which consist of at least three spreads
6 of equipment", and inserting in lieu thereof the words
7 "five hundred (500) acres on operations which consist of
8 multiple spreads of equipment";

9 On page two hundred thirty-nine, subsection 14.15.c.,
10 line three, after the word "regraded", by inserting the
11 words "and stabilized";

12 On page two hundred thirty-nine, subsection 14.15.c.,
13 line four, after the word "plan", by striking out the
14 "comma" and the remainder of the subparagraph, and
15 inserting in lieu thereof the words: The following shall
16 not be included in the calculation of disturbed area.;

17 On page two hundred forty, paragraph 14.15.c.2., line
18 seven, after the word "benches", by inserting the words
19 "without regard to like thickness";

20 On page two hundred forty, paragraph 14.15.c.5, line
21 two, after the word "graded", by inserting the words "with
22 material placed in a stable, controlled manner which will
23 not subsequently be moved".

1 (g) The legislative rule filed in the state register
2 on the twenty-ninth day of August, one thousand nine
3 hundred ninety-six, authorized under the authority of
4 section ten, 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 sixth day of November, one thousand nine hundred
9 ninety-six, relating to the division of environmental
10 protection (confidential information, 45 CSR 31), is
11 authorized.

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

1 (i) The legislative rule filed in the state register
2 on the fifth day of February, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 three, article twenty-two, 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 fifth day of February, one thousand nine hundred
9 ninety-seven, relating to the division of environmental
10 protection (voluntary remediation and redevelopment, 60 CSR
11 3), is authorized.

12 (j) That title sixty, series one of the code of state
13 rules be amended by deleting the current interpretative
14 rule for the office of environmental advocate and inserting
15 in lieu thereof the following legislative rule, to read as
16 follows:

17 "**§61-10-1. General.**

18 **1.1. Scope.** - This legislative rule governs and
19 controls the appointment and qualifications of the position
20 of Environmental Advocate within the Division of
21 Environmental Protection.

22 **1.2. Authority** - West Virginia Code §22-1-3, 22-1-3a,
23 22-20.

1 1.3. Filing Date -

2 1.4. Effective Date - July 1, 1997.

3 §61-10-2. Appointment, Salary and Qualifications.

4 2.1. Appointment. - The position of Environmental
5 Advocate will be a full-time position, will be appointed by
6 the Director, and will serve at the will and pleasure of
7 the Director of the Division of Environmental Protection in
8 accordance with the West Virginia Code §22-20-1.

9 2.2. Salary. - The salary of the position of
10 Environmental Advocate will be set by the Director and is
11 subject to future adjustments at the discretion of the
12 Director.

13 2.3. Qualifications. - The Director will receive or
14 solicit applications for the position of Environmental
15 Advocate from persons having the following minimum
16 qualifications:

17 2.3.a. A citizen and resident of the State of West
18 Virginia.

19 2.3.b. A graduate from an accredited college or
20 university with a four-year degree in a field of study
21 directly related to the qualifications, powers, and duties
22 of the position as set forth by the director.

1 2.3.c. A minimum of two years full-time or cumulative
2 experience in work directly related to environmental
3 protection, or other public service work or experience
4 which demonstrates the ability to carry out the powers and
5 duties of the position as set forth by the director.

6 2.3.d. A working familiarity with some of the legal
7 requirements and programmatic functions of the Division of
8 Environmental Protection.

9 2.3.e. A demonstrated ability to skillfully verbally
10 and by writing communicate in a public forum.

11 2.3.f. A demonstrated ability to use word processing
12 software for a computer and other necessary computer
13 skills as determined by the director.

14 2.3.g. A valid West Virginia driver's license.

15 **§61-10-3. Powers and Limitations -**

16 The Environmental Advocate will carry out the duties
17 of the position as set forth in this rule, and as
18 prescribed by the Director in accordance with the
19 following:

20 3.1. The Environmental Advocate will be guided in all
21 actions by the policy statement and the nine purposes set
22 forth in West Virginia Code §22-1-1 (b).

23 3.2. The Environmental Advocate may not in any

1 official capacity represent any person in, or file on
2 behalf of any person, legal or quasi-legal actions, either
3 in support of or opposed to the Division of Environmental
4 Protection without the expressed approval of the Director,
5 and under supervision of the Division of Environmental
6 Protection's General Counsel.

7 3.3. The Environmental Advocate may not in any
8 official capacity organize public campaigns in support of,
9 or in opposition to official positions taken by the
10 Division of Environmental Protection on environmental
11 matters, and will not in any official capacity actively
12 participate in any such organized campaign."

13 (k) The director of the division of environmental
14 protection is hereby authorized to propose for promulgation
15 an emergency rule to amend a current legislative rule
16 relating to monitoring of air quality (to prevent and
17 control particulate air pollution from manufacturing
18 process operation, 45 CSR 7).

19 (l) The legislative rule filed in the state register
20 on the eighteenth day of March, one thousand nine hundred
21 ninety-seven, relating to the division of environmental
22 protection (yard waste composting, 47 CSR 38E) is
23 authorized.

1 NOTE: The purpose of this bill is to authorize the
2 Division of Environmental Protection to promulgate a
3 legislative rule relating to Emission Standards For
4 Hazardous Air Pollutants.

5
6 Strike-throughs indicate language that would be
7 stricken from the present law, and underscoring indicates
8 new language that would be added.

4135

1 Bill-DEP,

H. B. 4135

2

(By Delegates Hunt, Linch, Compton, Jenkins,

3

Faircloth and Riggs)

4

[Introduced January 30, 1998; referred to the

5

Committee on the Judiciary.]

6

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8

9

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

16 *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 TO**
22 **PROMULGATE LEGISLATIVE RULES.**

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

4135

1 (a) The legislative rule filed in the state register
2 on the thirtieth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section six,
4 article eighteen, chapter twenty-two of this code, relating
5 to the division of environmental protection (hazardous
6 waste management, 33 CSR 20), is authorized.

7 (b) The legislative rule filed in the state register
8 on the twenty-ninth day of August, one thousand nine
9 hundred ninety-six, authorized under the authority of
10 section four, article five, chapter twenty-two of this
11 code, relating to the division of environmental protection
12 (standards of performance for new stationary sources
13 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

14 (c) The legislative rule filed in the state register
15 on the ~~twenty-ninth~~ first day of August, one thousand nine
16 hundred ~~ninety-six~~ ninety-seven, authorized under the
17 authority of section ~~four~~ seven, article five, chapter
18 twenty-two of this code, relating to the division of
19 environmental protection (emission standards for hazardous
20 air pollutants pursuant to 40 CFR Part 63, 45 CSR 34), is
21 authorized.

22 (d) The legislative rule filed in the state register
23 on the twenty-eighth day of August, one thousand nine

1 hundred ninety-six, authorized under the authority of
2 section six, article seventeen, chapter twenty-two of this
3 code, modified by the division of environmental protection
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 twenty-second day of October, one thousand nine hundred
7 ninety-six, relating to the division of environmental
8 protection (underground storage tank insurance trust fund,
9 33 CSR 32), is authorized.

10 (e) The legislative rule filed in the state register
11 on the twenty-ninth day of August, one thousand nine
12 hundred ninety-six, authorized under the authority of
13 section three, article one, chapter twenty-two of this
14 code, modified by the division of environmental protection
15 to meet the objections of the legislative rule-making
16 review committee and refiled in the state register on the
17 twentieth day of December, one thousand nine hundred
18 ninety-six, relating to the division of environmental
19 protection (WV/NPDES regulations for coal mining
20 facilities, 47 CSR 30), is authorized.

21 (f) The legislative rule filed in the state register
22 on the thirtieth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section four,

1 article three, chapter twenty-two of this code, modified by
2 the division of environmental protection to meet the
3 objections of the legislative rule-making review committee
4 and refiled in the state register on the twenty-first day
5 of February, one thousand nine hundred ninety-seven,
6 relating to the division of environmental protection
7 (surface mining and reclamation regulations, 38 CSR 2), is
8 authorized, with the following amendments:

9 "On page three, subsection 2.4, by striking out the
10 words "Coal seams commonly associated with such minerals
11 may include, but are not limited to Waynesburg, Washington,
12 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk
13 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
14 Stockton Lewiston";

15 On page three, subsection 2.4, line eight, by striking
16 out the words "these seams are", and inserting in lieu
17 thereof the words "the seam is";

18 On page nine, subsection 2.43, line two, after the
19 word "highwall", by inserting the words "except in
20 operations where the entire upper horizon above the lowest
21 coal seam is proposed to be partly or entirely removed";

22 On page sixteen, subsection 2.95, line seven after
23 the "any", by inserting the word "substantial";

1 On page eighteen, subsection 2.108, line two, after
2 the word "stream." by adding the following: Examples
3 include wildlife ponds, settling basins and all ponds and
4 facilities or structures used for water treatment.;

5 On page nineteen, subsection 2.120, line three, by
6 striking the word "or" and inserting in lieu thereof the
7 word "and";

8 On page twenty-nine, subsection 3.2.e., after the word
9 "period" by striking the remainder of the subdivision
10 3.2.e.;

11 On page forty-nine, subsection 3.14.b.7., by striking
12 the entire paragraph;

13 On page forty-nine, subsection 3.14.b.8., by striking
14 the entire paragraph;

15 On page forty-nine, by renumbering the remaining
16 paragraphs;

17 On page fifty-one, subparagraph 3.14.b.14E, line one,
18 before the word "A", by inserting the words "If requested
19 by the Director";

20 On page fifty-one, subsection 3.14.b.15.B., by
21 striking the entire subparagraph, and inserting in lieu
22 thereof the following: 3.14.b.15.B. Surface water must be
23 diverted around or over the material by properly designed

1 and stabilized diversion channels which have been designed
2 using the best current technology to provide protection to
3 the environment or the health, welfare and safety of the
4 public. The channel shall be designed and constructed to
5 ensure stability of the remaining material, control
6 erosion, and minimize water infiltration into the remaining
7 material.;

8 On page seventy-two, subdivision 3.29.a, line five
9 after the word "IBR", by inserting the words "or where it
10 has been demonstrated to the satisfaction of the Director
11 that limited coal removal on areas immediately adjacent to
12 the existing permit is the only practical alternative to
13 recovery of unanticipated reserves or necessary to enhance
14 reclamation efforts or environmental protection";

15 On page eighty-six, by inserting a new subsection 3.35
16 to read as follows: 3.35. All grade measurements and
17 linear measurements in this rule shall be subject to a
18 tolerance of two percent (2%). All angles in this rule
19 shall be measured from the horizontal and shall be subject
20 to a tolerance of five percent (5%): *Provided, however,*
21 *this allowable deviation from the approved plan does not*
22 *affect storage capacity and/or performance standards.*

23 On page one hundred eight, subdivision 5.5.c., line

1 two, after the word "landowner", by striking the remainder
2 of the paragraph and inserting in lieu thereof the words
3 "requesting the permanent structures be left for
4 recreational or wildlife propagation purposes or for any
5 beneficial uses to the landowner";

6 On page one hundred twelve, subdivision 6.5.a., line
7 five, after the word "Sunday." by adding the following:
8 *Provided, however,* the Director may grant approval of a
9 request for Sunday blasting if the operator demonstrates to
10 the satisfaction of the Director that the blasting is
11 necessary and there has been an opportunity for a public
12 hearing.;

13 On page one hundred twenty-six, paragraph 9.2.i.2,
14 after the word "achieved" by inserting: An alternate
15 maximum or minimum soil pH may be approved based on the
16 optimum pH for the revegetation species.;

17 On page one hundred thirty, line one, paragraph
18 9.3.h.1., by striking out the paragraph in its entirety,
19 and inserting in lieu thereof: 9.3.h.1. The minimum
20 stocking rate of commercial tree species shall be in
21 accordance with the approved forest management plan
22 prepared by a registered professional forester. In no case
23 may the rate be less than four hundred fifty (450) stems

1 per acre of commercial tree species;

2 On page one hundred thirty, paragraph 9.3.h.2., by
3 striking out the paragraph in its entirety, and by
4 renumbering the subsequent paragraphs;

5 On page one hundred thirty, in renumbered paragraph
6 9.3.h.2., after the word "than", by striking out the words
7 "four hundred fifty (450)", and inserting in lieu thereof
8 "three hundred (300);" On page one hundred thirty, in
9 renumbered paragraph 9.3.h.2., after the word "acre", by
10 inserting the words "or the rate specified in the forest
11 management plan, whichever is greater,";

12 On page two hundred twenty-two, subdivision 14.11.e,
13 line 6, by striking out the word "operable" and by
14 inserting in lieu thereof "such condition that operations
15 could be resumed within sixty (60) days";

16 On page two hundred twenty-three, subdivision
17 14.11.f., line four, by striking out the word "operative",
18 and by inserting in lieu thereof the words "such condition
19 that the operations could be resumed within sixty (60)
20 days";

21 On page two hundred twenty-three, subdivision
22 14.11.f., line four, after the word "is", by inserting the
23 words "protected from unauthorized entry";

1 On page two hundred thirty-eight, subparagraph
2 14.15.b.6.A., line five, after the word "exceed", by
3 striking out the words "fifty (50) percent of the total
4 permit acreage, or four hundred (400) acres, whichever is
5 less, on operations which consist of at least three spreads
6 of equipment", and inserting in lieu thereof the words
7 "five hundred (500) acres on operations which consist of
8 multiple spreads of equipment";

9 On page two hundred thirty-nine, subsection 14.15.c.,
10 line three, after the word "regraded", by inserting the
11 words "and stabilized";

12 On page two hundred thirty-nine, subsection 14.15.c.,
13 line four, after the word "plan", by striking out the
14 "comma" and the remainder of the subparagraph, and
15 inserting in lieu thereof the words: The following shall
16 not be included in the calculation of disturbed area.;

17 On page two hundred forty, paragraph 14.15.c.2., line
18 seven, after the word "benches", by inserting the words
19 "without regard to like thickness";

20 On page two hundred forty, paragraph 14.15.c.5, line
21 two, after the word "graded", by inserting the words "with
22 material placed in a stable, controlled manner which will
23 not subsequently be moved".

1 (g) The legislative rule filed in the state register
2 on the twenty-ninth day of August, one thousand nine
3 hundred ninety-six, authorized under the authority of
4 section ten, 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 sixth day of November, one thousand nine hundred
9 ninety-six, relating to the division of environmental
10 protection (confidential information, 45 CSR 31), is
11 authorized.

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

1 (i) The legislative rule filed in the state register
2 on the fifth day of February, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 three, article twenty-two, 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 fifth day of February, one thousand nine hundred
9 ninety-seven, relating to the division of environmental
10 protection (voluntary remediation and redevelopment, 60 CSR
11 3), is authorized.

12 (j) That title sixty, series one of the code of state
13 rules be amended by deleting the current interpretative
14 rule for the office of environmental advocate and inserting
15 in lieu thereof the following legislative rule, to read as
16 follows:

17 **"§61-10-1. General.**

18 1.1. **Scope.** - This legislative rule governs and
19 controls the appointment and qualifications of the position
20 of Environmental Advocate within the Division of
21 Environmental Protection.

22 1.2. **Authority** - West Virginia Code §22-1-3, 22-1-3a,
23 22-20.

1 **1.3. Filing Date -**

2 **1.4. Effective Date - July 1, 1997.**

3 **§61-10-2. Appointment, Salary and Qualifications.**

4 **2.1. Appointment.** - The position of Environmental
5 Advocate will be a full-time position, will be appointed by
6 the Director, and will serve at the will and pleasure of
7 the Director of the Division of Environmental Protection in
8 accordance with the West Virginia Code §22-20-1.

9 **2.2. Salary.** - The salary of the position of
10 Environmental Advocate will be set by the Director and is
11 subject to future adjustments at the discretion of the
12 Director.

13 **2.3. Qualifications.** - The Director will receive or
14 solicit applications for the position of Environmental
15 Advocate from persons having the following minimum
16 qualifications:

17 **2.3.a.** A citizen and resident of the State of West
18 Virginia.

19 **2.3.b.** A graduate from an accredited college or
20 university with a four-year degree in a field of study
21 directly related to the qualifications, powers, and duties
22 of the position as set forth by the director.

1 2.3.c. A minimum of two years full-time or cumulative
2 experience in work directly related to environmental
3 protection, or other public service work or experience
4 which demonstrates the ability to carry out the powers and
5 duties of the position as set forth by the director.

6 2.3.d. A working familiarity with some of the legal
7 requirements and programmatic functions of the Division of
8 Environmental Protection.

9 2.3.e. A demonstrated ability to skillfully verbally
10 and by writing communicate in a public forum.

11 2.3.f. A demonstrated ability to use word processing
12 software for a computer and other necessary computer
13 skills as determined by the director.

14 2.3.g. A valid West Virginia driver's license.

15 **§61-10-3. Powers and Limitations -**

16 The Environmental Advocate will carry out the duties
17 of the position as set forth in this rule, and as
18 prescribed by the Director in accordance with the
19 following:

20 3.1. The Environmental Advocate will be guided in all
21 actions by the policy statement and the nine purposes set
22 forth in West Virginia Code §22-1-1 (b).

23 3.2. The Environmental Advocate may not in any

1 official capacity represent any person in, or file on
2 behalf of any person, legal or quasi-legal actions, either
3 in support of or opposed to the Division of Environmental
4 Protection without the expressed approval of the Director,
5 and under supervision of the Division of Environmental
6 Protection's General Counsel.

7 3.3. The Environmental Advocate may not in any
8 official capacity organize public campaigns in support of,
9 or in opposition to official positions taken by the
10 Division of Environmental Protection on environmental
11 matters, and will not in any official capacity actively
12 participate in any such organized campaign."

13 (k) The director of the division of environmental
14 protection is hereby authorized to propose for promulgation
15 an emergency rule to amend a current legislative rule
16 relating to monitoring of air quality (to prevent and
17 control particulate air pollution from manufacturing
18 process operation, 45 CSR 7).

19 (l) The legislative rule filed in the state register
20 on the eighteenth day of March, one thousand nine hundred
21 ninety-seven, relating to the division of environmental
22 protection (yard waste composting, 47 CSR 38E) is
23 authorized.

1 NOTE: The purpose of this bill is to authorize the
2 Division of Environmental Protection to promulgate a
3 legislative rule relating to Emission Standards For
4 Hazardous Air Pollutants.

5
6 Strike-throughs indicate language that would be
7 stricken from the present law, and underscoring indicates
8 new language that would be added.