

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FORM #6

Do Not Mark In This Box

FILED

MAY 20 12 39 PM '99

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

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: "Emissions 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) HB2533

SECTION 64-3-1(g) , PASSED ON March 21, 1999

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: June 1, 1999

Karen G. Watson
Authorized Signature

\$2.60



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
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West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

May 19, 1999

Ms. Judy Cooper
Director, Administrative
Law Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

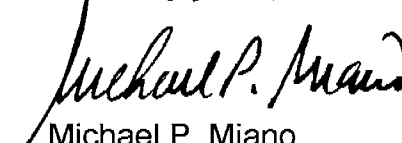
RE: 45CSR34 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

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 2533, signed by Governor Underwood April 2, 1999.

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

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp
Karen Watson
Carrie Chambers

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 2533 Section 64-3-1(g)

06/16/98	Filed Notice of Public Hearing with Secretary of State.
06/16/98	Initial Filing with Legislative Rule-Making Review Committee.
07/21/98	Held Public Hearing.
07/21/98	End of Public Comment Period.
07/31/98	Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
12/15/98	Rule Approved by Legislative Rule-Making Review Committee with Modifications.
01/05/99	Modified Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
03/21/99	Passed the West Virginia Legislature.
04/02/99	Approved by the Governor.
05/20/99	Rule Final Filed with Secretary of State.
06/01/99	Effective Date of Rule.

MAY 20 12 39 PM '99

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

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. -- May 20, 1999.

1.4. Effective Date. -- June 1, 1999.

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 July 1, 1997, as amended by the Federal Register through June 1, 1998.

§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

45CSR34

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, 1998.

§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 effective July 1, 1997, as amended by the Federal Register through June 1, 1998, 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, notwithstanding any requirements of 45CSR30.

§45-34-5. Director.

45CSR34

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:

5.1.b.1. alternate means of emission limitations;

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

5.1.b.5. alternate monitoring methods;

5.1.b.6. waivers/adjustments to recordkeeping and reporting;

5.1.b.7. emissions averaging; or

5.1.b.8. applicability determinations; or

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.

1258

45-34

H. B. 2526

1 Bill-DEP,

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(By Delegates Hunt, Linch, Compton, Faircloth,
Jenkins and Riggs)

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[Introduced February 1, 1999; referred to the
Committee on the Judiciary.]

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

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

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

22 **ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO**

23 **PROMULGATE LEGISLATIVE RULES.**

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

2 (a) The legislative rule filed in the state register
3 on the first day of August, one thousand nine hundred
4 ninety-seven, authorized under the authority of section
5 seven, article five, chapter twenty-two, of this code,
6 relating to the division of environmental protection (acid
7 rain provisions and permits, 45 CSR 33), is authorized.

8 (b) The legislative rule filed in the state register
9 on the ~~first thirty-first~~ day of ~~August~~ July, one thousand
10 nine hundred ~~ninety-seven~~ ~~ninety-eight~~, authorized under
11 the authority of section seven, article five, chapter
12 twenty-two of this code, modified by the division of
13 environmental protection to meet the objections of the
14 legislative rule-making review committee and refiled in the
15 state register on the fifth day of January, one thousand
16 nine hundred ninety-nine, relating to the division of
17 environmental protection (emission standards for hazardous
18 air pollutants pursuant to 40 CFR Part 63, 45 CSR 34), is
19 authorized.

20 (c) The legislative rule filed in the state register
21 on the first day of August, one thousand nine hundred
22 ninety-seven, authorized under the authority of section
23 six, article eighteen, chapter twenty-two of this code,

1 relating to the division of environmental protection
2 (hazardous waste management, 33 CSR 20), is authorized.

3 (d) The legislative rule filed in the state register
4 on the fourteenth day of August, one thousand nine hundred
5 ninety-seven, authorized under the authority of section
6 four, article five, chapter twenty-two, of this code,
7 relating to the division of environmental protection (to
8 prevent and control particulate air pollution from
9 manufacturing process operations, 45 CSR 7) is authorized.

10 (e) The legislative rule filed in the state register
11 on the first day of August, one thousand nine hundred
12 ninety-seven, authorized under the authority of section
13 four, article five, 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 seventh
17 day of January, one thousand nine hundred ninety-eight,
18 relating to the division of environmental protection (to
19 prevent and control of emissions from municipal solid waste
20 landfills, 45 CSR 23), is authorized.

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

1 seven, article one, chapter twenty-two of this code,
2 modified by the division of environmental protection to
3 meet the objections of the legislative rule-making review
4 committee and refiled in the state register on the second
5 day of December, one thousand nine hundred ninety-
6 seven, relating to the division of environmental protection
7 (to prevent and control air pollution from hazardous waste
8 treatment, storage or disposal facilities, 45 CSR 25), is
9 authorized.

10 (g) The legislative rule filed in the state register
11 on the first day of August, one thousand nine hundred
12 ninety-seven, authorized under the authority of section
13 three, article one, 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 fifth
17 day of January, one thousand nine hundred ninety-eight,
18 relating to the division of environmental protection
19 (surface mining and reclamation regulations, 38 CSR 2), is
20 authorized.

21

22 NOTE: The purpose of this bill is to authorize the
23 Division of Environmental Protection to promulgate a
24 legislative rule relating to Emission Standards for

1 Hazardous Air Pollutants Pursuant to 40 CFR Part 63.

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