

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

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

**FILED**

Aug 12 11 03 AM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Division of Environmental Protection  
AGENCY: Office of Air Quality TITLE NUMBER: 45CSR35

CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES \_\_\_ NO X

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

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 45CSR35

TITLE OF RULE BEING PROPOSED: Requirements for Determining Conformity of  
General Federal Actions to Applicable Air Quality Implementation Plans  
(General Conformity)

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Roger T. Hall  
Authorized Signature

19280  
5-60 w/o

45CSR35

REQUIREMENTS FOR DETERMINING CONFORMITY OF GENERAL  
FEDERAL ACTIONS TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS  
(GENERAL CONFORMITY)

STATEMENT OF CIRCUMSTANCE

The purpose of this rule is to adopt the requirements of 40 CFR Part 93, Subpart B, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans". The Federal rule was promulgated by the U. S. Environmental Protection Agency (USEPA) to implement Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. §§ 7401 et seq.) which requires that all federal actions conform to applicable implementation plans under the Clean Air Act. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to applicable implementation plans developed pursuant to Section 110 and Part D of the CAA. The rule generally applies to federal actions except: (1) Those covered by the transportation conformity rule [40 CFR part 93, Subpart A]; (2) Actions with associated emissions below specified de minimis levels; and (3) Certain other actions which are exempt or presumed to conform to state and federal air quality plans.

This rule is necessary for the State to fulfill its responsibility under the Clean Air Act, as amended, and with the exceptions noted, incorporates by reference, the federal counterpart rule (40 CFR Part 93, Subpart B). The Director recommends incorporation of these criteria, procedures and requirements by reference.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency:  Office of Air Quality

Address:  1558 Washington Street, East   
 Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
Estimated Total Cost	\$ 28,000	\$ ----	\$ -0-	\$ 28,000	\$ 30,000
Personal Services	25,000	----	-0-	25,000	27,000
Current Expense	3,000	----	-0-	3,000	3,000
Repairs and Alterations	----	----	-0-	----	----
Equipment	----	----	-0-	----	----
Other	----	----	-0-	----	----

2. Explanation of above estimates: The Office of Air Quality of DEP projects that the proposed rule will require 0.5 man-year of professional staff time and the commitment of a small portion of clerical support for DEP/OAQ administration. Some office expenses and travel will also be involved.
3. Objectives of these rules: This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to all applicable implementation plans developed pursuant to Section 110 and part D of the CAA.
4. Explanation of overall economic impact of proposed rule.
  - A. Economic impact on state government.

See Note 2 above.

- B. Economic impact on political subdivisions; specific industries; specific groups of citizens.

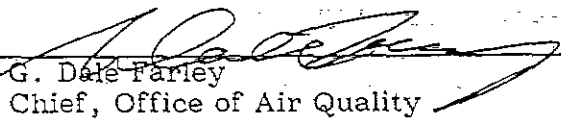
The proposed rule could negatively impact certain industries such as the construction industry and material suppliers as well as if certain political subdivisions of projects were cancelled under a finding of non-conformity. The economic impact of failure to comply with Clean Air Act Standards, however, could have far greater negative economic impact in these areas.

- C. Economic impact on citizens/public at large.

Minimal impacts should result with respect to the public at large.

Date: June 21, 1994

Signature of agency head or authorized representative:

  
G. Dale Farley  
Chief, Office of Air Quality

DATE: August 12, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: G. DALE FARLEY  
CHIEF, OFFICE OF AIR QUALITY  
DIVISION OF ENVIRONMENTAL PROTECTION

LEGISLATIVE RULE TITLE: Series 35 - "Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)"

1. Authorizing statute(s) citation W. Va. Code §§22-5-1 et seq.

2. a. Date filed in State Register with Notice of Hearing:

June 23, 1994

b. What other notice, including advertising, did you give of the hearing?

Class I legal advertisement filed in a newspaper published in each of

the Air Quality Control Regions of West Virginia.

Office of Air Quality mailing list.

c. Date of hearing(s): July 29, 1994

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received                     

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 12, 1994

f. Name and phone number of agency person to contact for additional information:

G. Dale Farley, Chief

Office of Air Quality (Phone: 558-2275)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

\_\_\_\_\_ N/A \_\_\_\_\_

b. Date of hearing: \_\_\_\_\_ N/A \_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

\_\_\_\_\_ N/A \_\_\_\_\_

d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_ N/A \_\_\_\_\_

REQUIREMENTS FOR DETERMINING CONFORMITY OF GENERAL FEDERAL  
ACTIONS TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS  
(GENERAL CONFORMITY)

Summary

New Rule: The purpose of this rule is to adopt the requirements of 40 CFR Part 93, Subpart B, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans". The federal rule was promulgated by the U.S. Environmental Protection Agency (USEPA) to implement Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.) which requires that all federal actions conform to applicable air quality implementation plans.

This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to all applicable implementation plans developed pursuant to Section 110 and Part D of the CAA. The rule generally applies to federal actions except: (1) Those required under the transportation conformity rule [40 CFR Part 93, Subpart A]; (2) Actions with associated emissions below specified de minimis levels; and (3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

Some examples of federal actions requiring conformity determination include: Airport Construction/Modification grants; Leasing of Federal Land; Granting a Permit; Construction of Federal Office Buildings; Private Construction on Federal Land; Prescribed Burning; Reuse of Military Bases; and Water Treatment Plants.

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

SERIES 35

**REQUIREMENTS FOR DETERMINING CONFORMITY OF GENERAL FEDERAL  
ACTIONS TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS  
(GENERAL CONFORMITY)**

**§45-35-1. General**

1.1. Scope. - The purpose of this rule is to adopt the requirements of 40 CFR Part 93, Subpart B, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans". The federal rule was promulgated by the U.S. Environmental Protection Agency (USEPA) to implement Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.) which requires that all federal actions conform to applicable air quality implementation plans. This rule applies only to areas designated nonattainment or maintenance areas under the Clean Air Act, as amended. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to all applicable implementation plans developed pursuant to Section 110 and Part D of the CAA. The rule generally applies to federal actions except: (1) Those required under the transportation conformity rule [40 CFR Part 93, Subpart A]; (2) Actions with associated emissions below specified de minimis levels; and (3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

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 Regulations - This rule is necessary for the State to fulfill its responsibility under the Clean Air Act, as amended, and, with the exceptions noted, incorporates by reference the federal counterpart rule [40 CFR Part 93, Subpart B] in accordance with the Director's recommendation.

1.6. Determination of Stringency - Federal Counterpart Regulations - The Director has determined that this rule is no more or no less stringent than the federal counterpart rule.

1.7. Constitutional Takings Determination - The Director has determined that this rule will not result in the constitutional taking of real property.

**§45-35-2. Definitions**

For the purpose of this rule, the following definitions shall be used:

2.1. Unless specified or added below, all terms used, but not defined, shall have the meaning given them or referred to by 40 CFR Part 93, Section 93.152, "Definitions".

2.2 "Applicable State Implementation Plan" (SIP), [also referred to as "applicable air quality implementation plan(s)", "applicable implementation plan(s)", or "applicable SIP"] specifically means the West Virginia State Implementation Plan, including the most current revisions approved by the United States Environmental Protection Agency (USEPA) and any Federal Implementation Plan implemented in the State of West Virginia pursuant to the Clean Air Act..

2.3. "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.

2.4. "Division of Environmental Protection" or "DEP" means the Division of Environmental Protection as defined in W. Va. Code §§22-1-1 et seq.

2.5. "State Governor" means the Governor of West Virginia or his or her designated representative.

2.6. "State and Local Air Quality Agency(ies)" and "State Agency" means the West Virginia Division of Environmental Protection, Office of Air Quality.

**§45-35-3. Adoption of Criteria, Procedures and Requirements**

3.1 The Director hereby adopts and incorporates by reference the provisions of

40 CFR Part 93, Subpart B, including associated criteria, procedures and requirements contained in 40 CFR Part 93, Subpart B, as of July 1, 1994, for the purpose of meeting the requirements of 40 CFR Part 51, Subpart W, Section 51.851.

**§45-35-4. Requirements**

4.1 No department, agency or instrumentality of the federal government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to applicable implementation plans in West Virginia, as required and specified by 40 CFR Part 93, Subpart B.

**§45-35-5. Severability**

5.1 The provisions of this rule are severable and if any provisions or part thereof shall be held invalid, unconstitutional, or inapplicable to any person or circumstance; such invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sections, or parts of this rule; or their application to any persons or circumstances.

REGULATION 35 ATTACHMENT

**§ 51.850 Mitigation of air quality impacts.**

(a) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.

(c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

(e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of § 51.856 and the public participation requirements of § 51.857.

(f) The implementation plan revision required in § 51.851 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled.

(g) After a State revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

**PART 93—DETERMINING CONFORMITY OF FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS**

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401-7671p.

2. Part 93 is amended by adding a new subpart B to read as follows:

**Subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans**

**Sec.**

- 93.150 Prohibition.
- 93.151 State implementation plan (SIP) revision.
- 93.152 Definitions.
- 93.153 Applicability.
- 93.154 Conformity analysis.
- 93.155 Reporting requirements.
- 93.156 Public participation.
- 93.157 Frequency of conformity determinations.
- 93.158 Criteria for determining conformity of general Federal actions.
- 93.159 Procedures for conformity determinations of general Federal actions.
- 93.160 Mitigation of air quality impacts.

**Subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans**

**§ 93.150 Prohibition.**

(a) No department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this subpart before the action is taken.

(c) Paragraph (b) of this section does not include Federal actions where:

(1) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

(2)(i) Prior to December 30, 1993, an environmental analysis was commenced or a contract was awarded to develop the specific environmental analysis;

(ii) Sufficient environmental analysis is completed by March 15, 1994 so that the Federal agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under section 176(c) of the Clean Air Act (Act); and

(iii) A written determination of conformity under section 176(c) of the Act has been made by the Federal agency responsible for the Federal action by March 15, 1994.

(d) Notwithstanding any provision of this subpart, a determination that an

action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the National Environmental Policy Act (NEPA), or the Clean Air Act (Act).

**§ 93.151 State implementation plan (SIP) revision.**

The Federal conformity rules under this subpart, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the Act requirements until such time as the required conformity SIP revision is approved by EPA. A State's conformity provisions must contain criteria and procedures that are no less stringent than the requirements described in this subpart. A State may establish more stringent conformity criteria and procedures only if they apply equally to nonfederal as well as Federal entities. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable SIP, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in this part would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the State revises its SIP to specifically remove them from the SIP and that revision is approved by EPA.

**§ 93.152 Definitions.**

Terms used but not defined in this part shall have the meaning given them by the Act and EPA's regulations (40 CFR chapter I), in that order of priority.

*Affected Federal land manager* means the Federal agency or the Federal official charged with direct responsibility for management of an area designated as Class I under the Act (42 U.S.C. 7472) that is located within 100 km of the proposed Federal action.

*Applicable implementation plan or applicable SIP* means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under section 110 of the Act, or promulgated under section 110(c) of the Act (Federal implementation plan), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the Act and which implements the relevant requirements of the Act.

*Areawide air quality modeling analysis* means an assessment on a scale that includes the entire nonattainment

or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

*Cause or contribute to a new violation* means a Federal action that:

(1) Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the Federal action were not taken; or

(2) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

*Caused by, as used in the terms "direct emissions" and "indirect emissions,"* means emissions that would not otherwise occur in the absence of the Federal action.

*Criteria pollutant or standard* means any pollutant for which there is established a NAAQS at 40 CFR part 50.

*Direct emissions* means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action.

*Emergency* means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such Federal activities makes it impractical to meet the requirements of this subpart, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts and military mobilizations.

*Emissions budgets* are those portions of the applicable SIP's projected emission inventories that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, and/or maintenance for any criteria pollutant or its precursors.

*Emissions offsets, for purposes of § 93.158,* are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

*Emissions that a Federal agency has a continuing program responsibility for* means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. When

an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-Federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

*EPA* means the Environmental Protection Agency.

*Federal action* means any activity engaged in by a department, agency, or instrumentality of the Federal government or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase of the non-Federal undertaking that requires the Federal permit, license, or approval.

*Federal agency* means, for purposes of this subpart, a Federal department, agency, or instrumentality of the Federal government.

*Increase the frequency or severity of any existing violation of any standard in any area* means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

*Indirect emissions* means those emissions of a criteria pollutant or its precursors that:

(1) Are caused by the Federal action, but may occur later in time and/or may be further removed in distance from the action itself but are still reasonably foreseeable; and

(2) The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.

*Local air quality modeling analysis* means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

*Maintenance area* means an area with a maintenance plan approved under section 175A of the Act.

*Maintenance plan* means a revision to the applicable SIP, meeting the requirements of section 175A of the Act.

*Metropolitan Planning Organization (MPO)* is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.

*Milestones* has the meaning given in sections 182(g)(1) and 189(c)(1) of the Act.

*National ambient air quality standards (NAAQS)* are those standards established pursuant to section 109 of the Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone, particulate matter (PM-10), and sulfur dioxide (SO<sub>2</sub>).

*NEPA* is the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

*Nonattainment area* means an area designated as nonattainment under section 107 of the Act and described in 40 CFR part 81.

*Precursors of a criteria pollutant are:*  
(1) For ozone, nitrogen oxides (NO<sub>x</sub>), unless an area is exempted from NO<sub>x</sub> requirements under section 152(f) of the Act, and volatile organic compounds (VOC); and

(2) For PM-10, those pollutants described in the PM-10 nonattainment area applicable SIP as significant contributors to the PM-10 levels.

*Reasonably foreseeable emissions* are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

*Regional water and/or wastewater projects* include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

*Regionally significant action* means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emission inventory for that pollutant.

*Total of direct and indirect emissions* means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the "net" emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under § 93.153 (c),

(d), (e), or (f) are not included in the "total of direct and indirect emissions." The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants.

**§ 93.153 Applicability.**

(a) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*) must meet the procedures and criteria of 40 CFR part 51, subpart T, in lieu of the procedures set forth in this subpart.

(b) For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(1) or (2) of this section.

(1) For purposes of paragraph (b) of this section, the following rates apply in nonattainment areas (NAA's):

	Tons/year
Ozone (VOC's or NO <sub>x</sub> ):	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Marginal and moderate NAA's inside an ozone transport region	
VOC	50
NO <sub>x</sub>	100
Carbon monoxide:	
All NAA's	100
SO <sub>2</sub> or NO <sub>2</sub> :	
All NAA's	100
PM-10:	
Moderate NAA's	100
Serious NAA's	70
Pb:	
All NAA's	25

(2) For purposes of paragraph (b) of this section, the following rates apply in maintenance areas:

	Tons/year
Ozone (NO <sub>x</sub> ), SO <sub>2</sub> or NO <sub>2</sub> :	
All Maintenance Areas	100
Ozone (VOC's):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide:	
All Maintenance Areas	100
PM-10:	
All Maintenance Areas	100
Pb:	
All Maintenance Areas	25

(c) The requirements of this subpart shall not apply to the following Federal actions:

(1) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (b) of this section.

(2) Actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

(i) Judicial and legislative proceedings;

(ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.

(iii) Rulemaking and policy development and issuance.

(iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.

(v) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.

(vi) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

(vii) The routine, recurring transportation of material and personnel.

(viii) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.

(ix) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(x) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

(xi) The granting of leases, licenses such as for exports and trade, permits,

and easements where activities conducted will be similar in scope and operation to activities currently being conducted.

(xii) Planning, studies, and provision of technical assistance.

(xiii) Routine operation of facilities, mobile assets and equipment.

(xiv) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

(xv) The designation of empowerment zones, enterprise communities, or viticultural areas.

(xvi) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.

(xvii) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank necessary to effect monetary or exchange rate policy.

(xviii) Actions that implement a foreign affairs function of the United States.

(xix) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of CERCLA, and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

(xx) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent leasing to eligible applicants.

(xxi) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

(3) Actions where the emissions are not reasonably foreseeable, such as the following:

(i) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration

and development plans on a project level.

(ii) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.

(4) Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan.

(d) Notwithstanding the other requirements of this subpart, a conformity determination is not required for the following Federal actions (or portion thereof):

(1) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (section 173 of the Act) or the prevention of significant deterioration program (title I, part C of the Act).

(2) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (e) of this section.

(3) Research, investigations, studies, demonstrations, or training (other than those exempted under paragraph (c)(2) of this section), where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP;

(4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).

(5) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(e) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (d)(2) of this section and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under paragraph (d)(2) of this section are exempt from the requirements of this subpart only if

(1) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

(2) For actions which are to be taken after those actions covered by paragraph (e)(1) of this section, the Federal agency makes a new determination as provided in paragraph (e)(1) of this section.

(f) Notwithstanding other requirements of this subpart, actions specified by individual Federal agencies that have met the criteria set forth in either paragraph (g)(1) or (g)(2) of this section and the procedures set forth in paragraph (h) of this section are presumed to conform, except as provided in paragraph (j) of this section.

(g) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (g)(1) or (g)(2) of this section:

(1) The Federal agency must clearly demonstrate using methods consistent with this subpart that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(i) Cause or contribute to any new violation of any standard in any area;

(ii) Interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) Increase the frequency or severity of any existing violation of any standard in any area; or

(iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(A) A demonstration of reasonable further progress;

(B) A demonstration of attainment; or

(C) A maintenance plan; or

(2) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (b) of this section, based, for example, on similar actions taken over recent years.

(h) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(1) or (g)(2) of this section, the following procedures must also be complied with to presume that activities will conform:

(1) The Federal agency must identify through publication in the Federal

Register its list of proposed activities that are presumed to conform and the basis for the presumptions;

(2) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(4) The Federal agency must publish the final list of such activities in the Federal Register.

(i) Notwithstanding the other requirements of this subpart, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of §§ 93.150 and §§ 93.155 through 93.160 shall apply for the Federal action.

(j) Where an action otherwise presumed to conform under paragraph (f) of this section is a regionally significant action or does not in fact meet one of the criteria in paragraph (g)(1) of this section, that action shall not be presumed to conform and the requirements of §§ 93.150 and §§ 93.155 through 93.160 shall apply for the Federal action.

(k) The provisions of this subpart shall apply in all nonattainment and maintenance areas.

#### § 93.154 Conformity analysis.

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to this subpart must make its own conformity determination consistent with the requirements of this subpart. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

**§ 93.155 Reporting requirements.**

(a) A Federal agency making a conformity determination under § 93.158 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Act and the MPO a 30 day notice which describes the proposed action and the Federal agency's draft conformity determination on the action.

(b) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under § 93.158.

**§ 93.155 Public participation.**

(a) Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under § 93.158 with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

(b) A Federal agency must make public its draft conformity determination under § 93.158 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(c) A Federal agency must document its response to all the comments received on its draft conformity determination under § 93.158 and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.

(d) A Federal agency must make public its final conformity determination under § 93.158 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

**§ 93.157 Frequency of conformity determinations.**

(a) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity

determination is reported under § 93.155, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.

(b) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under § 93.155.

(c) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions, above the levels in § 93.153(b), a new conformity determination is required.

**§ 93.158 Criteria for determining conformity of general Federal actions.**

(a) An action required under § 93.153 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in § 93.153(b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of this section, and meets any of the following requirements:

(1) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;

(2) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

(3) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:

(i) Specified in paragraph (b) of this section, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(ii) Meet the requirements of paragraph (a)(5) of this section and, for local air quality modeling analysis, the requirement of paragraph (b) of this section;

(4) For CO or PM-10—

(i) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions

from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis; or

(ii) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on areawide modeling, or meet the requirements of paragraph (a)(5) of this section; or

(5) For ozone or nitrogen dioxide, and for purposes of paragraphs (a)(3)(i) and (a)(4)(ii) of this section, each portion of the action or the action as a whole meets any of the following requirements:

(i) Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the State makes a determination as provided in paragraph (a)(5)(i)(A) of this section or where the State makes a commitment as provided in paragraph (a)(5)(i)(B) of this section:

(A) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP;

(B) The total of direct and indirect emissions from the action (or portion thereof) is determined by the State agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the State Governor or the Governor's designee for SIP actions makes a written commitment to EPA which includes the following:

(1) A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the Federal action would occur;

(2) Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(3) A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to

implement additional requirements has been fully pursued;

(4) A determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and

(5) Written documentation including all air quality analyses supporting the conformity determination;

(C) Where a Federal agency made a conformity determination based on a State commitment under paragraph (a)(5)(i)(B) of this section, such a State commitment is automatically deemed a call for a SIP revision by EPA under section 110(k)(5) of the Act, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the State commits to revise the applicable SIP;

(ii) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under 40 CFR part 51, subpart T, or 40 CFR part 93, subpart A;

(iii) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years (described in § 93.159(d)) do not increase emissions with respect to the baseline emissions:

(A) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:

(1) Calendar year 1990;

(2) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the most representative year), if a classification is promulgated in 40 CFR part 81; or

(3) The year of the baseline inventory in the PM-10 applicable SIP;

(B) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in § 93.159(d)) using the historic activity levels (described in paragraph (e)(5)(iv)(A) of this section) and appropriate emission factors for the future years; or

(v) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.

(b) The area-wide and/or local air quality modeling analyses must:

(1) Meet the requirements in § 93.159; and

(2) Show that the action does not:  
(i) Cause or contribute to any new violation of any standard in any area; or  
(ii) Increase the frequency or severity of any existing violation of any standard in any area.

(c) Notwithstanding any other requirements of this section, an action subject to this subpart may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.

(d) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made.

#### § 93.159. Procedures for conformity determinations of general Federal actions.

(a) The analyses required under this subpart must be based on the latest planning assumptions.

(1) All planning assumptions must be derived from the estimates of population, employment, travel, and congestion most recently approved by the MPO, or other agency authorized to make such estimates, where available.

(2) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.

(b) The analyses required under this subpart must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on

a generic basis for a specific Federal agency program.

(1) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIPs in that State must be used for the conformity analysis as specified in paragraphs (b)(1)(i) and (ii) of this section:

(i) The EPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and

(ii) A grace period of 3 months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)"<sup>1</sup> must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(c) The air quality modeling analyses required under this subpart must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2-78-027R)<sup>2</sup>, unless:

(1) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and

(2) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(d) The analyses required under this subpart, except § 93.158(a)(1), must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(1) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

<sup>1</sup> Copies may be obtained from the Technical Support Division of OAQPS, EPA, MD-14, Research Triangle Park, NC 27711.

<sup>2</sup> See footnote 1 at § 93.159(b)(2).

(2) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

(3) Any year for which the applicable SIP specifies an emissions budget.

**§ 93.160 Mitigation of air quality impacts.**

(a) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are

identified as conditions for making conformity determinations.

(c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

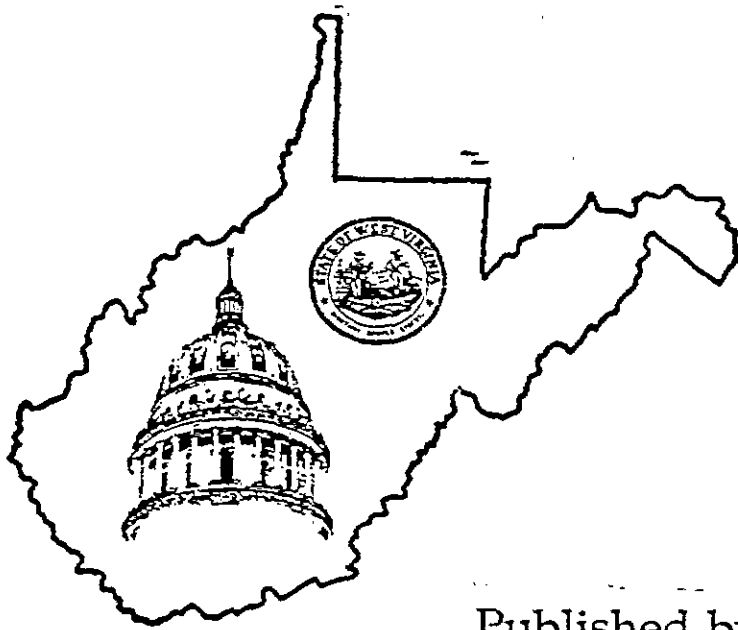
(e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of § 93.156 and

the public participation requirements of § 93.157.

(f) The implementation plan revision required in § 93.151 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled.

(g) After a State revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

(FR Doc. 93-28818 Filed 11-29-93; 8:45 am)  
BILLING CODE 6540-01-P



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**WEST  
VIRGINIA  
REGISTER**

Published by Ken Hechler, Secretary of State

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Volume XI

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June 24, 1994

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A Weekly Publication

Administrative Law Division

Judy Cooper  
Director

Missy Phalen  
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(304)558-6000

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SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

LEGISLATIVE

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JUN 21 4 17 PM '94

OFFICE OF THE SECRETARY OF STATE

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OFFICE OF THE SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection TITLE NUMBER: 45

RULE TYPE: Legislative; CITE AUTHORITY V. Va. Code §§22-5-1 et. seq.

AMENDMENT TO AN EXISTING RULE: YES NO X

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

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 35

TITLE OF RULE BEING PROPOSED: Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)

DATE OF PUBLIC HEARING: July 29, 1994 TIME: 9:00 am

LOCATION OF PUBLIC HEARING: WVDEP - Office of Air Quality  
1558 Washington Street East  
Charleston WV 25311

COMMENTS LIMITED TO: ORAL \_\_\_\_\_ WRITTEN \_\_\_\_\_ BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Office of Air Quality  
1558 Washington Street E  
Charleston WV 25311

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

  
Authorized Signature

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA LOTTERY

INSTANT GAME NO. 62  
"MONEY TREE"

RULES AND REGULATIONS

Starting Date: JUNE 27, 1994



# WEST VIRGINIA REGISTER

Published by Ken Hechler, Secretary of State

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*Issue 26*

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*A Weekly Publication*

*Administrative Law Division*

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OTHER

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JUN 23 2 51 PM '94

## NOTICE OF PUBLIC HEARING

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
- 45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).
- 45CSR16 - Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intra-source Pollutants (Amendment).
- 45CSR33 - Acid Rain Provisions and Permits (New Rule).
- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

FILED

JUN 23 2 50 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

PUBLIC NOTICE OF HEARING  
G & L Coal Company, Inc.  
PERMIT NUMBER S-3035-87

A hearing has been scheduled to be held on August 18, 1994, in the West Virginia Division of Environmental Protection Conference Room located at No. 10 McJunkin Road, Nitro, West Virginia, beginning at 10:00 AM for G & L Coal Company, Inc.

The purpose of this hearing is to show cause why G & L Coal Company, Inc., Permit Number S-3035-87 operating in the Valley District of Fayette County, should not be revoked and associated securities forfeited by David C. Callaghan, Director of the Division of Environmental Protection.

SHOW CAUSE #529

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JUN 23 2 51 PM '94

NOTICE OF PUBLIC HEARING

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

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- 45CSR33 - Acid Rain Provisions and Permits (New Rule).
- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
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The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Library of the Office of Air Quality located at the address below.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 22, 1994

The Wheeling News-Register and  
Intelligencer  
Legal Ad Department  
1500 Main Street  
Wheeling, WV, 26003

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

  
Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 23, 1994

Mr. Tim Carroll  
Office of Air Quality  
Northern Panhandle Regional Office  
1911 Warwood Avenue  
Wheeling, West Virginia 26003

Dear Mr. Carroll:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

## NOTICE OF PUBLIC HEARING

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Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Office of Air Quality, Northern Panhandle Regional Office, 1911 Warwood Avenue, Wheeling, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 22, 1994

The Parkersburg News  
Legal Ad Department  
519 Juliana Street  
Parkersburg, WV 26102

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dale Farley".

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 23, 1994

Ms. Dorothy Chittum  
Librarian  
Parkersburg/Wood County Public Library  
3100 Emerson Avenue  
Parkersburg, West Virginia 26104

Dear Ms. Chittum:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

## NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
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The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Parkersburg/Wood County Public Library, 3100 Emerson Avenue, Parkersburg, West Virginia.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 22, 1994

The Herald-Dispatch  
Legal Ad Department  
P. O. Box 2017  
Huntington, WV 25720

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dale Farley".

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 23, 1994

Mr. Matt Onion  
Cabell County Public Library  
455 9th Street Plaza  
Huntington, West Virginia 25701

Dear Mr. Onion:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dale Farley".

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

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The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Cabell County Public Library, 455 9th Street Plaza, Huntington, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 22, 1994

Charleston Daily Mail  
Legal Ad Department  
1001 Virginia Street, East  
Charleston, WV 25301

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

  
Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 23, 1994

Ms. Jeanne Chandler  
Librarian  
Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311

Dear Ms. Chandler:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dale Farley".

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

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Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Library of the Office of Air Quality located at the address below.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 22, 1994

Beckley Register/Herald  
Legal Ad Department  
P. O. Drawer P  
Beckley, WV 25801

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dale Farley".

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 23, 1994

Ms. Susan Vidovich  
Librarian  
Raleigh County Public Library  
P. O. Box 1876  
Beckley, West Virginia 25802

Dear Ms. Vidovich:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

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Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Raleigh County Public Library, P. O. Box 1876, Beckley, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 22, 1994

The Clarksburg Exponent  
Legal Ad Department  
P. O. Box 2000  
Clarksburg, WV 26301

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

  
Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 23, 1994

Ms. Donna Riggs  
Secretary  
WV Office of Air Quality  
North Central Regional Office  
109 Adams Street, Room M-2  
Fairmont, West Virginia 26554-2800

Dear Ms. Riggs:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

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Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Office of Air Quality, North Central Regional Office, 517 1/2 East Park Avenue, Fairmont, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor  
John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director  
Ann A. Spaner  
Deputy Director

June 22, 1994

Mineral Daily News Tribune  
Legal Ad Department  
P. O. Box 879  
Keyser, West Virginia 26726

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dale Farley".

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 23, 1994

Ms. Karen Hiser  
Librarian  
Keyser-Mineral County Public Library  
105 North Main Street  
Keyser, West Virginia 26726

Dear Ms. Hiser:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

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Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

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- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Keyser-Mineral County Public Library, 105 North Main Street, Keyser, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection...  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 22, 1994

The Record Delta  
Legal Ad Department  
P. O. Box 550  
Buckhannon, WV 26201

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

  
Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 23, 1994

Ms. Ruth B. Six  
Librarian  
Gassaway Public Library  
100 Birch Street  
Gassaway, West Virginia 26624

Dear Ms. Six:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

## NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
- 45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).
- 45CSR16 - Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).
- 45CSR33 - Acid Rain Provisions and Permits (New Rule).
- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Gassaway Public Library, 100 Birch Street, Gassaway, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 22, 1994

Elkins Inter-Mountain  
Legal Ad Department  
P. O. Box 1339  
Elkins, WV 26241

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dale Farley".

Dale Farley  
Chief, Office of Air Quality

DF/tim

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 23, 1994

Elkins-Randolph County Public Library  
c/o Librarian  
416 Davis Avenue  
Elkins, West Virginia 26241

Dear Librarian:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

## NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
- 45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).
- 45CSR16 - Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).
- 45CSR33 - Acid Rain Provisions and Permits (New Rule).
- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Elkins-Randolph County Public Library, 416 Davis Avenue, Elkins, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 22, 1994

The Evening/Weekend Journal  
Legal Ad Department  
207 West King Street  
Martinsburg, WV 25401

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dale Farley".

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 23, 1994

Ms. Peggy Y. Batten  
Librarian  
Martinsburg-Berkeley County Public Library  
101 West King Street  
Martinsburg, West Virginia 25401

Dear Ms. Batten:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

June 23, 1994

Mr. Richard Poling  
Office of Air Quality  
Eastern Panhandle Regional Office  
P. O. Box 99  
Burlington, West Virginia 26710

Dear Mr. Poling:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dale Farley".

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

## NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
- 45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).
- 45CSR16 - Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).
- 45CSR33 - Acid Rain Provisions and Permits (New Rule).
- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following locations: Martinsburg-Berkeley County Public Library, 101 King Street, Martinsburg, WV and the Office of Air Quality's Burlington Office, P. O. Box 99, Burlington, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599

NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:
45CSR14- Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the provision of Significant Deterioration (Amendment).
45CSR15- Emission Standards for Hazardous Air Pollutants (Amendment).
45CSR16- Standards of Performance for New Stationary Sources (Amendment).
45CSR19- Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for In-source Pollutants (Amendment).
45CSR33- Acid Rain Provisions and Permits (New Rule).
45CSR34- Emission Standards for Hazardous Air Pollutants (New Rule).
45CSR35- Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16, and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Office of Air Quality, Northern Panhandle Regional Office, 1911 Wanwood Avenue, Wheeling, WV.

Please provide any written comments or questions to the following contact and office:
G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599
Intel., June 29
N.R., June 29

STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

I, Bonnie Mattern for the publisher of the
WHEELING NEWS-REGISTER &
WHEELING INTELLIGENCER
newspapers published in the CITY OF
WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication
was inserted in said newspaper on the following dates:

June 29, 1994

commencing on the 29 day of June, 19 94

Given under my hand this 29 day of June, 19 94

Bonnie Mattern

Sworn to and subscribed before me this 29th day of

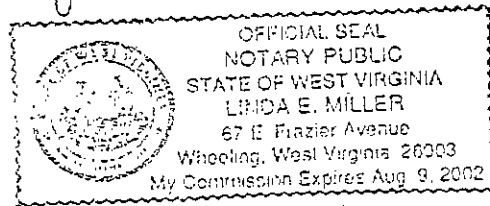
June 19 94 at WHEELING, OHIO COUNTY, WEST VIRGINIA

Linda E. Miller

Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires August 9, 2002



NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).

45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).

45CSR16 - Standards of Performance for New Stationary Sources (Amendment).

45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intra-source Pollutants (Amendment).

45CSR33 - Acid Rain Provisions and Permits (New Rule).

45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).

45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16, and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR80 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR81 and 40CFR83 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Parkersburg/Wood County Public Library, 3100 Emerson Avenue, Parkersburg, West Virginia.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 24311-2599

Jun. 28 N

NOTAR  
1829-  
61Y

HEATHER BYERS  
being first duly sworn, says that the

NOTICE OF PUBLIC HEARING

hereto attached was printed in the Parkersburg News

a DAILY newspaper published  
in the City of Parkersburg, Wood County, West Virginia, and posted  
at the front door of the Court House for ONE

successive weeks, the first publication and posting thereon being on  
the 28th day of June, 1994, and subse-

quent publication on the        day of       , 19      ,

the        day of       , 19      , the        day of       ,

and the        day of       , 19      .

Printer's Fee \$ 37.02  
6/8 " x 103 = 592.25 words @ .0625

*Heather Byers*

Subscribed and sworn to before me this 28th day of  
June 1994

*Dellam Byers*  
Notary Public for Wood County, West Virginia

commission expires 3-23-04

# AFFIDAVIT OF PUBLICATION

NOTICE  
NOTICE OF  
PUBLIC HEARING  
on Friday, July 29,  
4, beginning at 9:00  
a.m. the West Virginia  
Division of Environmen-  
tal Protection, Office of  
Air Quality, will hold a  
public hearing on the  
following proposed leg-  
islative rules:

STATE OF WEST VIRGINIA,  
COUNTY OF CABELL, TO-WIT:

45CSR14 - Permits for  
Construction and  
Major Modification of  
Major Stationary  
Sources of Air Pollu-  
tion for the Preven-  
tion of Significant  
Deterioration  
(Amendment).

45CSR15 - Emission  
Standards for Haz-  
ardous Air Pollutants  
(Amendment).

45CSR16 - Standards  
of Performance for  
New Stationary  
Sources (Amend-  
ment).

45CSR19 - Require-  
ments for Pre-  
construction Review,  
Determination of  
Emission Offsets for  
Proposed New or  
Modified Stationary  
Sources of Air Pollu-  
tants and Emission  
Trading for Intra-  
source Pollutants  
(Amendment).

45CSR33 - Acid Rain  
Provisions and Per-  
mits (New Rule).

45CSR34 - Emission  
Standards for Haz-  
ardous Air Pollutants  
(New Rule).

45CSR35 - Require-  
ments for Determin-  
ing Conformity of  
General Federal Ac-  
tions to Applicable  
Air Quality Imple-  
mentation Plans (Gen-  
eral Conformity)  
(New Rule).

Upon authorization  
and promulgation,  
45CSR14, 45CSR19, and  
45CSR35 will be submit-  
ted to the U.S. Environ-  
mental Protection Agen-  
cy for incorporation into  
the West Virginia Sta-  
n Implementation  
under the federal  
Clean Air Act, as  
amended. Upon authori-  
zation and promulgation  
45CSR15, 45CSR16  
and 45CSR34, the Direc-  
tor of the Division of  
Environmental Protec-  
tion will request that  
EPA delegate to the  
West Virginia DEP the  
authority to enforce  
the Source Perform-  
ance Standards promul-  
gated by USEPA under  
CERCLA and National  
Emission Standards for  
Hazardous Air Pollu-  
tants promulgated by  
EPA under 40CFR61  
and 40CFR63 as of June  
1994. The DEP Direc-  
tor will also request  
that legislative  
approval and promulga-  
tion of that USEPA ap-  
proved 45CSR33 which  
incorporates the State's  
rating permit pro-  
gram for facilities sub-  
ject to the requirements  
of Title IV (Acid Rain  
Program) of the Clean  
Air Act.

I, Connie Rappold being first duly sworn, depose and say  
that I am Legal Clerk for The Herald-Dispatch, a corporation, who publishes at Huntington,  
Cabell County, West Virginia, the newspaper: The Herald-Dispatch, a independent newspa-  
per, in the morning seven days each week, Monday through Sunday including New Year's  
Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas; that I have  
been duly authorized by the Board of Directors of such corporation to execute this affidavit of  
publication for an on behalf of such corporation and the newspaper mentioned herein; that the  
legal advertisement attached in the left margin of this affidavit and made a part hereof and  
bearing number LH-877 was duly published in

The Herald-Dispatch

1 time

~~one time, once a week for XXXXX successive weeks~~, commencing with its issue of the  
27th day of June, 19 94, and ending with the issue of the 27th day  
of June, 19 94, and was posted at the East door  
of the Cabell County Courthouse

on the 27th day of June, 19 94: that said legal advertisement was  
published on the following dates: June 27, 1994

\$76.96; that the cost of publishing said annexed advertisement as aforesaid was  
has been and is now published regularly, at least as frequently as once a week for at  
least fifty weeks during the calendar year as prescribed by its mailing permit, and has  
been so published in the municipality of Huntington, Cabell County, West Virginia, for  
at least one year immediately preceding the date on which the legal advertisement  
set forth herein was delivered to such newspaper for publication; that such newspa-  
per is a newspaper of "general circulation" as defined in Article 3, Chapter 59, of the  
West Virginia Code, within the publication area or areas of the municipality of Hunt-  
ington, Cabell and Wayne Counties, West Virginia, and \_\_\_\_\_

that such newspaper is circulated to the general public at a definite price or consid-  
eration; that such newspaper on each date published consists of not less than four  
pages without a cover; and that it is a newspaper to which the general public resorts  
for passing events of a political, religious, commercial and social nature, and for cur-  
rent happenings, announcements, miscellaneous reading matters, advertisements  
and other notices.

Connie Rappold

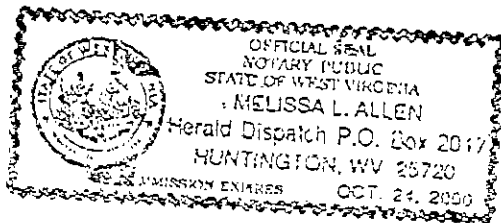
Taken, subscribed and sworn to before me in my said county this 27th day of  
June, 19 94

My commission expires October 24, 2000

Melissa Allen

Notary Public  
Cabell County,  
West Virginia

10M Form A-135 (867H)



ence Room at 1550  
Washington Street East,  
Charleston, West Vir-  
ginia. The hearing is  
open to the public. Writ-  
ten comments by all in-  
terested parties will be  
accepted from the date  
of this notice until the  
close of the hearing and  
made part of the  
record. Oral comments  
will be accepted at the  
public hearing and will  
be limited to five min-  
utes per person per  
rule. The period for pub-  
lic comment will end at  
the close of the hearing.

Copies of the proposed  
legislative rules may be  
obtained from the Office  
of Secretary of State or  
may be reviewed during  
normal business hours  
at the following loca-  
tion: Cabell County  
Public Library, 455 9th  
Street Plaza, Hunting-  
ton, WV.

Please provide any  
written comments or  
questions to the follow-  
ing contact and office:

G. Dale Farley  
Office of Air Quality  
Division of  
Environmental  
Protection  
1558 Washington St. E.  
Charleston, WV  
25311-2599  
LH-877 6-27,94



P.O. Box 2993  
 Charleston, West Virginia 25330  
 Billing 348-4898  
 Classified 348-4848  
 1-800-WVA-NEWS  
 FEIN 55-0676079

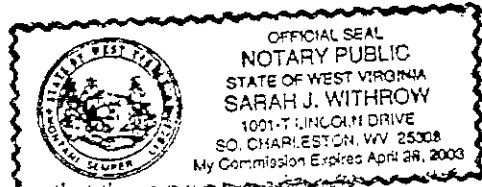
ACCOUNT NBR	037143002
SALES REP ID	0016
INVOICE NBR	371430020629005

Legal pricing is based upon 67 words per column inch at a rate of \$.0725 per word.  
 Each successive insertion is discounted by 25% of the first insertion rate (\$.054375 per word).

ISSUE DATE	AD TYPE	PUB	DESCRIPTION		AD NUMBER	AD SIZE	RATE	GROSS AMOUNT	NET AMOUNT
			REFERENCE NBR	PURCHASE ORDER #		TOTAL RUN			
06/28	LEGF	DM	PUBLIC HEARING		L213020	3X0400			
			121258001			12.00	4.85	58.20	58.20
TOTAL INVOICE AMOUNT									58.20

State of West Virginia, **AFFIDAVIT OF PUBLICATION**

I, Sandra Hugg of



THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER, published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of PUBLIC HEARING was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County, West Virginia, on the 29TH day of JUNE 1994. Published during the following dates: 06/28/94-06/28/94  
 Subscribed and sworn to before me this 30 day of June  
 Printers fee \$ 58.20

Sandra J. Withrow  
 Notary Public of Kanawha County, West Virginia

LEGAL ADVERTISEMENT      LEGAL ADVERTISEMENT      LEGAL ADVERTISEMENT

NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
- 45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).
- 45CSR16 - Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).
- 45CSR33 - Acid Rain Provisions and Permits (New Rule).
- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following: Library of the Office of Air Quality located at the address below.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
 Office of Air Quality  
 Division of Environmental Protection  
 1558 Washington Street, East  
 Charleston, WV 25311-2599 (213020)

The items listed hereon conform to specification, were received and are approved for payment.					
Date: 07-21-94		Signed: <u>N. Sitter</u>			
Appn. Yr.	Acct. #	Line Item			
95	7897-17	035			
Off. Code:	Fed. Code:	P.C.:			
5	504	509			
Purchase Auth.	Vendor			Off App/ Due	
SA	FEIN # 550-676-079				
No.	SS #				
4					
TIMS FUND	FIMS FY	FIMS ORG	FIMS ACT	FIMS OBJ CODE	DOC #
8708	1995	0313	096		

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS INC.

### BECKLEY, WEST VIRGINIA 25801

June 28, 19 94

STATE OF WEST VIRGINIA  
 COUNTY OF RALEIGH, to wit:

I, Robert E. Zutaut being first duly sworn upon my oath, do depose and say that I am Advertising Manager of Beckley Newspapers Inc., a corporation, publisher of the newspaper entitled The Register-Herald, an independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily, for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of Public Hearing  
 (Description of notice)

was duly published in said newspaper once a week for one  
 successive week (Class I), commencing with the issue of the  
28th day of June, 1994 and ending with the issue  
 of the 28th day of June, 1994, (and was posted at the

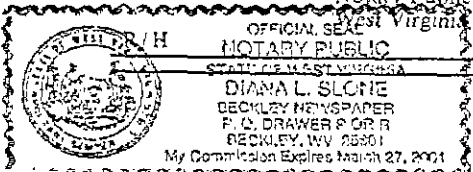
on the \_\_\_\_\_ day of \_\_\_\_\_); that said annexed  
 notice was published on the following dates: June 28, 1994 and that the

cost of publishing said annexed notice as aforesaid was \$ 37.40

Signed R. E. Zutaut  
 Robert E. Zutaut, Advertising Manager  
 Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this  
28th day of June, 19 94

My commission expires March 27, 2001  
Diana L. Stone  
 Notary Public of Raleigh County,



### COPY OF PUBLICATION

7-12-Tue-4-RH

**NOTICE OF PUBLIC HEARING**  
 On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
- 45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).
- 45CSR16 - Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).
- 45CSR33 - Acid Rain Provisions and Permits (New Rule).
- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirement of Title VI (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the

following location: Raleigh County Public Library, P.O. Box 1878, Beckley, WV.  
 Please provide any written comments or questions to the following contact and office: Dale Farley, Office of Air Quality, Division of Environmental Protection, 1558 Washington Street, East, Charleston, WV 25311-2599.  
 6-28-Tue-1-RH

PUBLISHER'S CERTIFICATE

NOTICE OF PUBLIC HEARING  
On Friday, July 29, 1994, beginning at 9:00 a. m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14- Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
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- 45CSR16- Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19- Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intra-source Pollutants (Amendment).
- 45CSR33- Acid Rain Provisions and Permits (New Rule).
- 45CSR34- Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35- Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16, and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Office of Air Quality, North Central Regional Office, 517 1/2 East Park Avenue, Fairmont, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599

STATE OF WEST VIRGINIA,  
COUNTY OF HARRISON

I, Deborah S. Veltri

Classified Office Manager of THE CLARKSBURG EXPONENT, a newspaper of general circulation published in the City of Clarksburg, County and State aforesaid, do hereby certify that the annexed

~~Notice of Public Hearing~~

was published in said THE CLARKSBURG EXPONENT one time, on the

25 day of June 1994

The publisher's fee for said publication is \$ 20.70

Deborah S. Veltri  
Classified Office Mgr. of The Clarksburg Exponent

SEAL

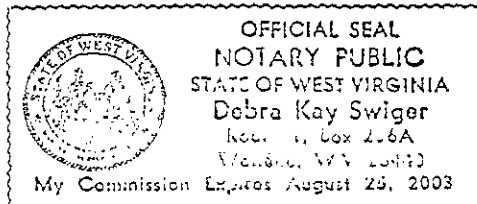
Subscribed and sworn to before me this 25 day  
June 94

of \_\_\_\_\_, 19\_\_\_\_

Debra Kay Swiger  
Notary Public in and for Harrison County, WV

My commission expires on the 25th day of August, 2003

Form CA-14 E



I, as an officer of the News-Tribune, a daily newspaper published at Keyser, Mineral County, West Virginia, hereby certify that the Division

of Environmental Protection in the case of Notice of

Public Hearing: Proposed

Legislative Rules

VS. \_\_\_\_\_

a copy whereof is hereto annexed has been published for 1 consecutive day

in said NEWS-TRIBUNE, the first publication being on the 28th day of,

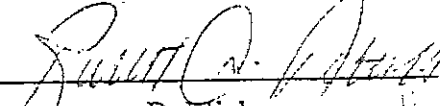
June

19 94.

Given under my hand at Keyser this 28th

day of June

19 94.

  
Publisher

Publisher's Fee  
\$ 31.50

**NOTICE OF PUBLIC HEARING**

On Friday, July 29, 1994, beginning at 9 a.m., the West Virginia Division of Environmental Protection, Office Fair Quality, will hold a public hear on on the following proposed legislative rules:

45CSR14- Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).

45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).

45CSR16 - Standards of Performance for New Stationary Sources (Amendment).

45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).

45CSR33 - Acid Rain Provisions and Permits (New Rule).

45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).

45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CS35 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the Federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16, and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR 61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Keyser-Mineral County Public Library, 105 North Main Street, Keyser, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599

# State of West Virginia, County of Upshur, ss:

..... Mark Davis ..... Advertising Manager  
Record Delta, a newspaper published at Buckhannon in the said county, do hereby  
certify that the annexed ..... NOTICE OF PUBLIC HEARING .....

..... was published once a week for ..... ONE (1) ..... successive weeks in  
said Record Delta newspaper published as aforesaid, commencing on the 27th day  
..... of June ..... days of 19..94.....

Given under my hand this 29th day of June ... day of 19..94.....

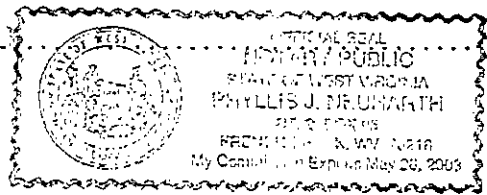
..... *Mark Davis* ..... Advertising Manager  
Printers fee \$ . 27.60.....

## WEST VIRGINIA, UPSHUR COUNTY, TO-WIT:

Subscribed and sworn to before me this 29th day of June day of 19..94.....

..... *Phyllis J. Neubarth* ..... Notary Public.

My Commission expires *May 26, 2003*



### NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:  
45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).  
45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).  
45CSR16 - Standards of Performance for New Stationary Sources (Amendment).  
45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intra-source Pollutants (Amendment).  
45CSR33 - Acid Rain Provisions and Permits (New Rule).  
45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).  
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Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.  
The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.  
Copies of the proposed legislative rules may be obtained from the Office of the Secretary of State or may be reviewed during normal business hours at the following location: Gassaway Public Library, 100 Birch Street, Gassaway, WV.  
Please provide any written comments or questions to the following contact and office:  
G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2593  
6-27

# State of West Virginia, County of Randolph, ss.

**NOTICE OF PUBLIC HEARING**

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

45CSR14 — Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).

45CSR15 — Emission Standards for Hazardous Air Pollutants (Amendment).

45CSR16 — Standards of Performance for New Stationary Sources (Amendment).

45CSR19 — Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).

45CSR33 — Acid Rain Provisions and Permits (New Rule).

45CSR34 — Emission Standards for Hazardous Air Pollutants (New Rule).

45CSR35 — Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).



Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comments will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Elkins-Randolph County Public Library, 416 Davis Avenue, Elkins, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Parley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2562

I, James Hoffman, Publisher of THE INTER-MOUNTAIN, a newspaper published at Elkins, in said county, do hereby certify that the annexed advertisement was published on the following dates:

June 25

19 94 as required by law.

Given under my hand this 25 day of June, 1994

*James Hoffman*  
4169  
Publisher

Printer's Fee: \$

Witness me this 25 day of June, 1994

*Shirley A. Meneas*  
Notary Public

15 day of April, 19 2002

OFFICE OF AIR QUALITY  
JUN 29 11:20 AM '94

**NOTICE OF PUBLIC HEARING**

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

**45CSR14-** Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).

**45CSR15-** Emission Standards for Hazardous Air Pollutants (Amendment).

**45CSR16-** Standards of Performance for New Stationary Sources (Amendment).

**45CSR19-** Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intra-source Pollutants (Amendment).

**45CSR33-** Acid Rain Provisions and Permits (New Rule).

**45CSR34-** Emission Standards for Hazardous Air Pollutants (New Rule).

**45CSR35-** Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)(New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR25 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following locations: Martinsburg-Berkeley County Public Library, 101 King Street, Martinsburg, WV and the Office of Air Quality's Burlington Office, P.O. Box 99, Burlington, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Fraley  
Office of Air Quality  
Division of  
Environmental Protection  
1558 Washington Street, East

# Certificate of Publication

This is to certify the annexed advertisement

WV DEPT. COMM., LABOR, ENV. RES.  
DIV. ENV. PROTECTION, MS. SITTON

## NOTICE OF PUBLIC HEARING

appeared for 1 consecutive <sup>days</sup> weeks  
in The Journal Publishing Company a  
newspaper published in the City of  
Martinsburg, W. Va., in its issue  
beginning

6/29

and ending

The Journal

Fee \$ 39.16

OAQ MAILING LIST FOR PUBLIC HEARINGS/MEETINGS

Mr. Larry Myers  
Allegheny Power Service Corp.  
800 Cabin Hill Drive  
Greensburg, Pennsylvania 15601

Mr. Brian Broderick  
BNA PLUS  
Bureau of National Affairs  
1231 25th Street, N.W.  
Washington, D.C. 20037

Mr. Greg Scandrett  
ERM Midwest  
5088 West Washington Street  
Charleston, WV 25313

Ms. Becky Fleming  
Charleston Daily Mail  
1001 Virginia Street, East  
Charleston, WV 25301

Mr. Norm Steenstra  
Environmental Coordinator  
West Virginia Citizen Action Group  
1324 Virginia Street, East  
Charleston, West Virginia 25301

Mr. Eric Niller  
Charleston Gazette  
1002 Virginia Street, East  
Charleston, WV 25301

Ms. Joline Brady  
103 Timberlake Circle  
Scott Depot, WV 25560

Ms. Mildred Holt  
P. O. Box 367  
Institute, WV 25112

Ms. Lillian Erskin  
52 Bailes Drive  
Nitro, WV 25143

Ms. Suzanne Tenkhoff  
National Institute for Chemical Studies  
Nitro/St. Albans Committee  
31 Bailes Drive  
Nitro, West Virginia 25143

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Charleston Fire Department  
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The Honorable William Croye  
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PUBLIC HEARING

JULY 29, 1994

NAME	COMPANY AFFILIATION	ADDRESS
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John Johnston	" "	" "
Jeff Hedgecock	" "	" "
Jeanne Chambers	" "	" "
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Dave White	" "	" "
Kim Castro	" "	" "
John Benedict	" "	1615 Washington St.
Rupe Burford	" "	" "
Fred Durham	" "	" "
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PUBLIC HEARING

JULY 29, 1994

NAME	COMPANY AFFILIATION	ADDRESS
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Karon Watson	Office of Air Quality	1615 Washington St.

PUBLIC HEARING  
WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

\* \* \* \* \*

The following is a transcript of a public hearing held at the West Virginia Division of Environmental Protection, Office of Air Quality, 1558 Washington Street, Charleston, Kanawha County, West Virginia, on July 29, 1994, at 9:00 a.m., and taken by Christy L. Morris, Certified Court Reporter and Notary Public, pursuant to notice.

\* \* \* \* \*

S U P E R I O R C O U R T R E P O R T I N G  
Christy L. Morris, CCR  
3719 Virginia Avenue, S.E.  
Charleston, West Virginia 25304  
(304) 925-2244 Mobile 542-4606

ORIGINAL

## PROCEEDINGS

MS. CHANDLER: Good morning. The public hearing will now come to order this 29th day of July, 1994 in the conference room of the West Virginia Division of Environmental Protection Office of Air Quality located at 1558 Washington Street, East, Charleston, West Virginia.

The purpose of the public hearing is to hear discussions on the seven rules filed in the Secretary of State's office on April 27, 1994, and noticed in the State register on April 29, 1994. In addition, the rules were noticed in Class 1 legal newspaper announcements throughout the State and to various individuals and organizations.

This public hearing is being held pursuant to the provisions of 29A of the West Virginia Code and Section 110 of the Clean Air Act.

By the way of introduction, my name is Jeanne Chandler of the Public Information Office of the West Virginia Division of Environmental Protection. I will be the moderator for these proceedings today.

The format of today's hearing may appear different than in the past for those of you

familiar with the prior APCC rulemaking hearings. The 1994 legislature enacted legislation which became effective on June 10, 1994, which reorganized the Division of Environmental Protection.

One of the effects of the legislation was to make the Air Program one of the offices of DEP, and as a result, the Air Pollution Control Commission no longer conducts rulemaking.

Because of time restraints this year, the Office of Air Quality decided to make the close of the comment period coincide with the close of today's hearing and noticed that fact in the public announcement.

One change in the Administrative Procedures Act which became effective in 1994 was the prohibition of ex parte communication with the rulemaking agency once the comment period closed.

Therefore, written comments will be accepted at the close of today's hearing but no later. The next opportunity to enter comments will be when the legislative rule-making committee begins its hearings on the proposed rules.

The hearing procedure today will be to introduce each rule individually, allow time for oral

comments, and close the hearing for that particular rule. Written comments for any rule may be submitted at the end of this public hearing.

Oral comments will be limited to five minutes per person, and for those of you wishing to make formal comments, a sign-up sheet was available, so if you haven't already signed up, please do so, now.

Also, if you're just a participant here today, we'd also like you to fill out the top page just for our record. I remind you that the comment period will close at the end of the public hearing today.

The court reporter is Ms. Christy Morris of Superior Court Reporting. If anyone desires a transcript of this proceeding, then please contact Ms. Morris at 925-2244, and her address is 3719 Virginia Avenue, S.E., Charleston, 25304.

#### 45CSR14

The purpose of the public hearing is to hear discussions on proposed Rule 45CSR14.

Permits For Construction And  
Modification Of Major Stationary Sources Of Air  
Pollution For The Prevention Of Significant

Deterioration. That's an amendment.

45CSR14 is being revised to reflect USEPA's changes to 40 CFR Section 51.166. Changes include: maximum allowable emissions increases for particulate matter; changes which clarify PSD preconstruction review requirements of Title 1 of the 1990 Clean Air Act Amendments to air pollution abatement projects undertaken at electric utility steam generating units; and changes to response to a petition by the West Virginia Manufacturer's Association to remove the hazardous air pollutants from PSD-review in accordance with section 112(b) (6) of the 1990 Clean Air Act Amendment. Definitions in Section 2 have been alphabetized.

Changes also reflect enactment of DEP Code. Changes are indicated by underline and strikeout.

Upon authorization and promulgation, 45CSR14 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the Federal Clean Air Act, as amended.

The floor is now open for any public comment. Oral comments, I will remind you, will be

limited to five minutes, and if you are called upon for comments, please go to the podium, identify yourself and affiliation, if any, prior to making any of your comments.

Yvonne Clarkson, would you like to make a comment?

MS. CLARKSON: I will be submitting written comments.

MS. CHANDLER: Kim Brown Poland.

MS. POLAND: I'll be submitting written comments on behalf of the Manufacturer's Association.

MS. CHANDLER: Well, for time's sake, does anyone want to make any oral comments regarding 45CSR14?

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, this public hearing for 45CSR14 is now concluded.

45CSR15

MS. CHANDLER: The purpose of the public hearing is to hear discussions on proposed rule 45CSR15.

Emission Standards For Hazardous Air Pollutants Pursuant To 40 CFR Part 61. This is an amendment.

This rule adopts emission standards for hazardous air pollutants promulgated by the United States Environmental Protection Agency under the federal Clean Air Act, as amended, and 40 CFR Part 61.

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 such standards.

Upon authorization and promulgation of 45CSR15, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 4-CFR63 as of June 1, 1994.

The floor is now open for public comment.

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, this public hearing for 45CSR15 is concluded.

45CSR16

MS. CHANDLER: The purpose of the public hearing is to hear discussions on proposed rule 45CSR16.

Standards Of Performance For New Stationary Sources. This is an amendment.

45CSR16, "Standards of Performance for New Stationary Sources", adopted by reference New Source Performance Standards (NSPS) promulgated by USEPA through May 1, 1993. This revision to the rule updates NSPS requirements through June 1, 1994.

Upon authorization and promulgation of 45CSR16, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards For Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994.

The floor is now open for public comment.

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, this public hearing for 45 CSR16 is concluded.

45CSR19

MS. CHANDLER: The purpose of the public

hearing is to hear discussions on proposed rule 45CSR19.

Requirements For Pre-construction Review, Determination Of Emission Offsets For Proposed New Or Modified Stationary Sources Of Air Pollutants And Emission Trading For Intrasource Pollutant. This is an amendment, also.

45CSR19 is currently being revised to reflect USEPA's changes to 40CFR Section 51.165. Changes include clarifying nonattainment area preconstruction review requirements of Title 1 of the 1990 Clean Air Act Amendments to projects undertaken at electric utility steam generating units in areas not attaining an ambient air quality standard; changes resulting from changes to the authorizing statute; and changes in Clean Air Act provisions.

Definitions in Section 2 have been alphabetized. Changes are indicated by underline and strikeout.

Upon authorization and promulgation, 45CSR19 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia state implementation plan under the federal Clean Air Act, as amended.

The floor is now open for any public

comment.

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, the public hearing for 45CSR19 is concluded.

45CSR33

MS. CHANDLER: The purpose of this hearing is to hear discussions on proposed rule 45CSR33.

Acid Rain Provisions And Permits.

This is a new rule. This rule adopts by reference the Title IV requirement of the Clean Air Act.

The Title IV requirements must be implemented by the State through adoption of the National Operating Permit System conforming to Title IV and V of the Clean Air Act.

Phase I permit applications were submitted to USEPA by February 15, 1993, and processed by EPA.

Phase II permit applications must be submitted by January 1, 1996, and will be processed by the State assuming the State has an approved Title V Operating Permit Program (via 45CSR30) and this approved Title IV rule.

Pursuant to legislative approval and

promulgation, the DEP Director will request that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The floor is now open for public comment.

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, this public hearing for 45CSR33 is concluded. --

#### 45CSR34

MS. CHANDLER: The purpose of this public hearing is to hear discussions on proposed rule 45CSR34.

Emission Standards For Hazardous Air Pollutants Pursuant To 40CFR Part 63. This is a new rule.

Title 45, Series 34 provides authority for the Director to determine and enforce case-by-case MACT standards for major hazardous air pollutant sources in the absence of a federal standard under certain circumstances as required for permit program approval under Title V of the Clean Air Act.

The proposed rule also establishes general provisions for emission standards for hazardous

pollutants (NESHAPS) and other regulatory requirements pursuant to section 112 of the federal Clean Air Act.

The 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 hazardous air pollutants in or pursuant to section 112 (b) of the Clean Air Act.

This rule incorporates by reference provisions relating to perchloroethylene dry cleaners, coke ovens, and synthetic organic chemical manufacturing (HON).

Upon authorization and promulgation of 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by the EPA under 40CFR61 and 40CFR63 as of June 1, 1994.

This floor is now open for public comment.

MS. CRITES: Good morning. My name is Karen Crites. I'm president of the West Virginia Manufacturer's Association.

The WVMA recognizes that EPA has put the office of Air Quality in a difficult position by its failure to develop timely our rule implementing Section 112 (g) of the Clean Air Act.

The State cannot adopt a complete a rule establishing its own method of implementing Section 112 (g) because, eventually, the State rule will have to be changed to reflect a federal rule when EPA completes it.

On the other hand, the Clean Air Act requires the State to make case-by-case MACT determination as soon as the State permit program is approved.

In light of the OAQ's inability, through no fault of its own, to promulgate a complete rule addressing section 112 (g), the WVMA suggests this rule be withdrawn and that the OAQ asks EPA, Region 3, to delay approval of the State's permit program until the federal 112 (g) is finalized.

Without an approved permit program, there is no requirement for the State to act under section 112 (g). If that is not acceptable, the WVMA suggests that the rule be withdrawn because there is already authority in existing rules; notably thirteen

and series 30 that would allow the OAQ to MACT determination on a temporary basis until a complete Rule 34 could be finalized.

Delaying Rule 34 until a federal rule is ready would efficiently conserve the Office of Air Quality's resources while still allowing the chief to comply with the requirements of the Clean Air Act through use of currently effective State rules.

Thank you for this opportunity to comment.

MS. CHANDLER: Is there any oral comments on 45CSR34?

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, the public hearing for 45CSR34 is concluded.

#### 45CSR35

MS. CHANDLER: The purpose of the public hearing is to hear discussions on proposed rule 45CSR35.

Requirements For Determining Conformity Of General Federal Actions To Applicable Air Quality Implementation Plans. (General Conformity) This is a new rule.

The purpose of this rule is to adopt

the requirements of 40CFR Part 93, Subpart B, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans".

The federal rule was promulgated by the U. S. Environmental Protection Agency to implement Section 176 (c) of the Clean Air Act, as amended, which requires that all federal actions conform to applicable air quality implementation plans.

This rule sets forth policy, criteria and procedures for demonstrating and assuring conformity of such activities to all applicable implementation plans developed pursuant to Section 110 and Part D of the Clean Air Act.

The rule generally applies to federal actions except: (1) Those required under the transportation of conformity rule (40CFR Part 93, Subpart A); (2) Actions with associated emissions below specified de minimis levels; and (3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

Upon authorization and promulgation, 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia state implementation plan under the federal

Clean Air Act, as amended.

The floor is now open for public comment.

MR. DURHAM: Good morning, my name is Fred Durham. I work for the West Virginia Division of Environmental Protection Office of Air Quality as a air pollution specialist.

Our office submitted this general proposed conformity rule to the United States Environmental Agency, Region 3, for review and comments.

Yesterday, I spoke with a representative from USEPA, Region 3, who informed me that no formal comments would be complete by today's hearing.

However, the representative did conduct a preliminary evaluation of this proposed rule, and in her opinion no major flaws were evident. Thank you.

MS. CHANDLER: Are there any more public comments on 45CSR?

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, this public hearing for 45CSR35 is concluded.

Would anyone else like to make any

comments concerning any of the rules?

(NO COMMENTS.)

MS. CHANDLER: If not, this hearing is  
concluded.)

(WHEREUPON, said hearing was  
concluded at 9:25 a.m.)

## REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to wit:

I, Christy L. Morris, Certified Court Reporter and Notary Public duly certified and commissioned, do hereby certify that the foregoing is a true and accurate transcript of the proceedings had in the public hearing on the 29th day of July, 1994.

Given under my hand and notarial seal this 29<sup>th</sup> day of JULY, 1994.

C. L. Morris - CCR  
Certified Court Reporter  
Notary Public

MY COMMISSION EXPIRES: 12/11/95

COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
REGARDING PROPOSED ADOPTION OF  
RULES CONTAINING  
REQUIREMENTS FOR DETERMINING CONFORMITY OF  
GENERAL FEDERAL ACTIONS TO  
APPLICABLE AIR QUALITY IMPLEMENTATION PLANS  
45 CSR 35

I. INTRODUCTION.

On June 21, 1994, the West Virginia Division of Environmental Protection ("DEP" or "Division") filed with the Secretary of State a proposed rule which would create 45 CSR Series 35, which pertains to determining the conformity of general federal actions to applicable air quality implementation plans. Accompanying the proposed rule was a notice requesting both written and oral comment. Pursuant to this notice, the West Virginia Manufacturers Association ("WVMA") has undertaken a review of the proposed rule, and files these comments.

The WVMA represents a broad cross-section of large and small industrial concerns throughout the State of West Virginia. In keeping with the WVMA's supportive position regarding the development of West Virginia's air pollution control program, the WVMA offers these comments as a means to facilitate progress toward a reasonable and protective program, consistent with the requirements of the Clean Air Act and regulations promulgated thereunder pertaining to determining the conformity of general federal actions to applicable air quality implementation plans.

The WVMA recognizes the necessity of adopting this rule to govern federal activities in nonattainment and maintenance

areas. For purposes of advising affected persons, it would be helpful to note the limited scope of this rule in Section 1.1 since it is not a state-wide requirement.

## II. COMMENTS.

### 1. Proposed 45 CSR 35-1.6 -- Determination of Stringency.

The WVMA asserts that it is inappropriate to incorporate this section into the proposed rule. Pursuant to W. Va. Code § 22-1-3a, where rules promulgated by the Director will be more stringent or less stringent than their federal counterpart, the Director is required to provide a written statement, setting out specific reasons which demonstrate that each particular, substantive provision that varies from the federal counterpart regulation is (in the case of a more stringent rule) or is not (in the case of a less stringent rule) "reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment or human health or safety."<sup>1</sup> However, the rule proposed by the Division adopts the federal regulations found at Subpart B of 40 C.F.R. 93 without deviation. In these circumstances, the determination regarding stringency is straight forward.

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<sup>1</sup> The statement required of the Director must take into consideration the scientific evidence, specific environmental characteristics of West Virginia or an area thereof, or stated legislative findings, policies or purposes relied upon by the Director in making the preceding determination. Accordingly, to comply with the legislative mandate, the Director's statement would need to be detailed and address specific provisions. The statement is not required in certain limited exceptions - none of which are applicable to the immediate circumstances.

However, as a general comment, the WVMA submits that the Director's statements with respect to stringency should not be included as a section in this or any other rule, but, instead, should be attached to each proposed rule as an addendum filed with the Secretary of State. The legislature did not contemplate that the Director's statement regarding stringency of specific provisions in a proposed rule would actually be incorporated into the rule and thereby be adopted as law. Accordingly, the stringency analysis should simply be reflected in the documents filed with the proposed and final rules with the Secretary of State as part of the rationale for the rule.

2. Proposed 45 CSR 35-1.7 -- Constitutional Takings Determination.

The WVMA asserts that it is also inappropriate to incorporate this section into the proposed rule. A "constitutional takings determination" or assessment is only required in limited circumstances, and promulgation of this rule does not appear to be one of them. Under W. Va. Code § 22-1A-3(a), such an assessment is not required, unless the action being contemplated by the Division is:

*reasonably likely to deprive a private real property owner of his or her property in fee simple or to deprive an owner of all productive use of his or her property \* \* \* .*

W. Va. Code § 22-1A-3(c) expressly exempts rulemaking which will simply limit use from the assessment requirement due to federal statute. In pertinent part, that Code section provides that the following actions do not require an assessment:

(1) Licensing or permitting conditions, requirements or limitations to the use of private real property pursuant to any applicable state or federal statutes, rules or regulations;

(2) Rules and emergency rules of the division that are reasonably likely to limit the use of private real property pursuant to any applicable state or federal statutes, rules or regulations; \* \* \*

See W. Va. Code § 22-1A-3(c)(1) and (2). Also, the WVMA believes that such provisions were not intended by the Legislature to actually be incorporated into rules themselves thereby making such "determination" laws by virtue of adoption of the rules. Accordingly, the WVMA recommends that this proposed section be deleted from the final rule, and a simple explanation of the analysis be included in the rule's statement of basis to be filed with the Secretary of State.

### III. CONCLUSION.

The WVMA appreciates having the opportunity to present these comments. We acknowledge the difficulties faced by the Division in addressing the many changes brought about by recent legislation, and offer the foregoing suggestions in a cooperative spirit directed at the implementation of an efficient and fair regulatory program for the comprehensive management of air quality in West Virginia.

Respectfully submitted, this the 29th day of July, 1994.

Karen S. Price, President  
West Virginia Manufacturers Association  
2001 Quarrier Street  
Charleston, West Virginia 25311  
Telephone: 342-2123

Prepared by:

Robinson & McElwee  
P. O. Box 1791  
Charleston, West Virginia 25326

Contact:

Kim Brown Poland, Esquire  
Telephone: 347-8348

**WVDEP/OAQ RESPONSE TO PUBLIC COMMENT ON  
PROPOSED 45CSR35  
REQUIREMENTS FOR DETERMINING CONFORMITY OF GENERAL FEDERAL  
ACTIONS TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS  
(GENERAL CONFORMITY)**

Only limited comments were received in response to 45CSR35. The sole oral comment was delivered by a member of the Office of Air Quality (OAQ) during the public hearing on July 29, 1994. The oral comment was that USEPA, Region III had performed a limited review of the rule and found the rule satisfactory. Two written comments were received. The first written comment was from USEPA Region III and confirmed the oral comment delivered by the OAQ person. Additionally, the written submission also commended OAQ for developing this rule. The OAQ acknowledges this comment.

The second written submission contained several comments. The first stated that "it would be helpful to note the limited scope of this rule in Section 1.1 since it is not a state-wide requirement".

The Office of Air Quality agrees with this comment. A sentence has been added to §45-36-1.1 to clarify that this rule applies only to areas designated nonattainment or maintenance areas under the Clean Air Act, as amended. For consistency and ease of referral, the date referencing the federal counterpart rule in §45-36-3.1 has also been changed to July 1, 1994.

Another comment asserted that incorporating the section containing the determination of stringency in relation to federal counterpart regulations in the rule [Section 1.6] is inappropriate. The comment notes that W.Va. Code §22-1-3 requires the Director of the Division of Environmental Protection to provide a written statement in circumstances in which the Director determines that the rule should be not be the same in substance as the counterpart federal regulation. In 45CSR36, the OAQ is proposing to incorporate the federal counterpart regulation with only limited changes that do not affect the stringency determination. The rule, as proposed, will be the same in substance as the federal counterpart and should not, therefore, require a written determination of the stringency of the rule in relation to the federal counterpart. However, OAQ responds that no reason exists to not include the determination and that as a matter of Division of Environmental Protection policy, that the specific "Determination of Stringency" section be included in each rule proposed by the individual Offices within the

Division. OAQ responds that the section as stated is satisfactory. However, OAQ originally included, and has retained, a section pertaining to "severability" in the event that this section or other sections of the rule are invalidated.

Another comment in the written submission was that incorporating the "Constitutional Takings Determination" section in the rule [Section 1.7] is inappropriate. The comment notes that W.Va. Code §22-1A-3(c)(2) expressly exempts the assessment in situations in which the state rule-making is required pursuant to an applicable federal rule. The commenter does not believe the Legislature intended for the determination to be part of the rule itself, thus becoming a law if the rule is authorized. The comment notes that an explanation of the takings determination simply be included as part of the rule filing. OAQ does not disagree with the comment, but notes that no specific reason exists to exclude the determination, and that as a matter of Division of Environmental Protection policy, that the specific "Constitutional Takings Determination" section be included in each rule proposed by the individual Offices within the Division. OAQ responds that the section as stated is satisfactory.



**DIVISION OF ENVIRONMENTAL PROTECTION**

10 McJunkin Road  
Nitro, WV 25143-2506

GASTON CAPERTON  
GOVERNOR

DAVID C. CALLAGHAN  
DIRECTOR

July 28, 1994

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

RE: CSR-45-35 - Requirements for Determining Conformity  
of General Federal Actions to Applicable Air  
Quality Implementation Plans

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned rule with your Office and the Legislative Rule-Making Review Committee as an agency-approved rule.

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