

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

FILED

APR 28 3 45 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Division of Environmental Protection
Office of Air Quality TITLE NUMBER: 45CSR38

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 45CSR38

TITLE OF RULE BEING PROPOSED: Provisions for Determination of
Compliance with Air Quality Management Rules

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

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

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

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

Roger T Hall
AUTHORIZED SIGNATURE

Roger Hall

LEGISLATIVE HISTORY ABSTRACT
45CSR38

**PROVISIONS FOR DETERMINATION OF COMPLIANCE WITH
AIR QUALITY MANAGEMENT RULES**

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

07/06/94 Filed Notice of Public Hearing with Secretary of State.

07/06/94 Initial Filing with Legislative Rule-Making Review Committee.

08/09/94 Held Public Hearing.

08/09/94 End of Public Comment Period.

08/12/94 Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.

11/13/94 Hearing Before the Legislative Rule-Making Review Committee.

11/13/94 Rule Approved by Legislative Rule-Making Review Committee with Modifications.

11/14/94 Legislative Rule-Making Review Committee Recommends that the Legislature Authorize the Agency to Promulgate 45CSR35 as Modified.

11/23/94 Modified Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.

03/10/95 Passed the West Virginia Legislature.

03/24/95 Approved by the Governor.

04/30/95 Rule Final Filed with Secretary of State.

05/01/95 Effective Date of Rule.

FILED

45CSR38

Nov 23 9 16 AM '94

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 38
PROVISIONS FOR DETERMINATION OF COMPLIANCE WITH
AIR QUALITY MANAGEMENT RULES

45-38-1. General.

1.1. Scope. -- The purpose of this rule is to clarify the types of data that may be used by an owner of a facility subject to air pollutant emission standards or by the Director of the Division of Environmental Protection in determining whether the facility is in compliance with or violation of the emission standards. This rule is to be promulgated pursuant to Sections 110(a)(2)(A), (C) and (F), 113(a) and (e) and 114(a)(3) of the federal Clean Air Act Amendments of November 15, 1990. The rule also clarifies the compliance testing procedures which are to be employed where existing emissions standards enforced by the Director are not definitive.

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Incorporation by Reference -- Federal Counterpart Regulation. This rule was developed as part of the State's Implementation Plan (SIP) pursuant to the federal Clean Air Act, as amended. The Implementation Plan has as its purpose the attainment and maintenance of attainment with the National Ambient Air Quality Standards.

This rule has been determined to incorporate necessary provisions for the attainment of the National Ambient Air Quality Standards but has not federal counterpart.

§45-38-2. Definitions.

2.1. "Air pollutant" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

2.2. "Director" means the Director of the 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.

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

45CSR38

2.4. "Enforceable" means enforceable by the Director and USEPA.

2.5. "Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source subject to air pollutant emission standards.

2.6. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state and all agencies or divisions thereof, any state political subdivision, the United States of America, any municipal, public, statutory, or private corporation or association organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature.

2.7. "State Implementation Plan", 'SIP' means a State Implementation Plan approved by USEPA which provides for implementation, maintenance, and enforcement of national ambient air quality standards for each state (or portion thereof).

2.9. "Source" means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.

2.10. "USEPA" means the United States Environmental Protection Agency.

§45-38-3. Compliance Determination Methods and Procedures.

3.1. If any rule enforceable by the Director, including any rule which has been incorporated in the State Implementation Plan by the United States Environmental Protection Agency (USEPA) does not contain definitive compliance determination procedures or if a related rule establishing such compliance determination procedures has not been authorized and adopted, reference test methods and continuous emission monitoring requirements promulgated by USEPA pursuant to the federal Clean Air Act under 40 CFR Part 60, 40 CFR Part 61, 40 CFR Part 63, and 40 CFR Part 75, as in effect on July 1, 1994, applicable to a specific type or category of source or for a similar source, in conjunction with any other credible evidence shall be employed in determining whether a particular source complies with or violates the applicable emission limitation. The averaging provisions of Section 2.5 of Method 9 in Appendix A of 40 CFR Part 60 as in effect on July 1, 1994 shall only apply when specifically stated to be applicable in an effective rule.

§45-38-4. Compliance Certification by a Source Owner or Operator.

4.1. For the purpose of submitting compliance certifications to the Director pursuant to any applicable rule or permit, an owner or operator of a source may use the following in addition to any compliance determination method applicable under any rule:

a. An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.

45CSR38

b. Any other monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and 45CSR30 and incorporated into an enforceable operating permit.

§45-38-5. Enforcement of Emission Standards or Limitations by the Director.

5.1. In enforcing emission limitations in any rule, including any rule which has been incorporated into the State Implementation Plan by USEPA, any credible evidence may be used by the Director for the purpose of establishing whether a person has violated or is in violation.

5.2. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:

a. An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.

b. A monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and 45CSR30 and incorporated in an enforceable operating permit.

c. Compliance test methods specified in applicable rules or used in accordance with Section 3 of this rule.

5.3. The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

a. Any enforceable monitoring or testing methods, including those contained in 40 CFR Parts 51, 60, 61, 63 and 75.

b. Other testing, monitoring or information gathering methods that produce information comparable to that produced by any method listed in subsection 5.2 or 5.3.a.

45-38

Bill-DEP, Compliance

LS 12

1
2
3
4
5
6
7
8
9

H. B. 2157

(By Delegates Gallagher, Douglas, Compton,
Linch, Faircloth and Riggs)

(Introduced January 23, 1995; referred to the
Committee on the Judiciary).

10 A BILL to amend chapter sixty-four of the code of West Virginia,
11 one thousand nine hundred thirty-one, as amended, by adding
12 thereto a new article, designated article three-b, relating
13 to authorizing the division of environmental protection to
14 promulgate legislative rules relating to provisions for
15 determination of compliance with air quality management
16 rules.

17 Be it enacted by the Legislature of West Virginia:

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

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

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

1 The legislative rules filed in the state register on the
2 twelfth day of August, one thousand nine hundred ninety-four,
3 modified by the division of environmental protection to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the twenty-third day of
6 November, one thousand nine hundred ninety-four, relating to the
7 division of environmental protection (provisions for
8 determination of compliance with air quality management rules),
9 are authorized.

10

11 NOTE: The purpose of this bill is to authorize the Division
12 of Environmental Protection to promulgate legislative rules
13 relating to provisions for determination of compliance with air
14 quality management rules.

15

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

SENATE BILL NO. 95

(By Senators Manchin, Anderson, Boley, Grubb and Macnaughtan)

[Introduced January 29 1995; referred to the
Committee on Natural Resources; and then to the
Committee on the Judiciary]

1
2
3
4
5
6
7
8
9

V5-38

10 A BILL to amend chapter sixty-four of the code of West Virginia,
11 one thousand nine hundred thirty-one; as amended, by adding
12 thereto a new article, designated article three-b, relating
13 to authorizing the division of environmental protection to
14 promulgate legislative rules relating to provisions for
15 determination of compliance with air quality management
16 rules.

17 Be it enacted by the Legislature of West Virginia:

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

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

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

1 The legislative rules filed in the state register on the
2 twelfth day of August, one thousand nine hundred ninety-four,
3 modified by the division of environmental protection to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the twenty-third day of
6 November, one thousand nine hundred ninety-four, relating to the
7 division of environmental protection (provisions for
8 determination of compliance with air quality management rules),
9 are authorized.

10

11 NOTE: The purpose of this bill is to authorize the Division
12 of Environmental Protection to promulgate legislative rules
13 relating to provisions for determination of compliance with air
14 quality management rules.

15

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



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

March 29, 1995

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

HB 2134 authorizing, **Title 45, Series 38, Provisions for determination of compliance with Air Quality Management rules**, passed the Legislature on **March 10, 1995**. It is signed by the Governor on March 24, 1995.

You have sixty (60) days after the Governor signs HB 2134, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 2134** section **64-3-1(j)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

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

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division



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

GASTON CAPERTON
GOVERNOR

DAVID C. CALLAGHAN
COMMISSIONER

April 26, 1995

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

RE: 45 CSR 95 - Determination of Compliance with Air
Pollution Control Emission Standards

Dear Ms. Cooper:

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

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

Sincerely yours,

David C. Callaghan
Commissioner
Bureau of Environment

DCC;RTH:cc

Attachment



DEPT. OF ENVIR. PROTECT.
OFFICE OF AIR QUALITY

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

1995 AUG 30 A 11: 04

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

(Plus all the volunteer help we can get)

TO: Tammy Mowrer
AGENCY: DEP- Air Quality

FROM: JUDY COOPER, DIRECTOR ADMINISTRATIVE LAW DIVISION

DATE: _____

THE AT
COMPU
CORREC
AND RE
THE RU

New Rule

EN ENTERED INTO OUR
RETURN IT WITH ANY
PLEASE SIGN THIS MEMO
A FINAL VERSION OF

PLEASE
(10) W
YOU HAV

IS FORM WITHIN TEN
REQUEST. CALL IF

SERIES: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

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

SIGNED: Tanna S. Mowrer

TITLE OF PERSON SIGNING: Administrative Secretary

DATE: November 20, 1995

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOV 27 2 54 PM '95

FILED

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900



DEPT. OF ENVIRON. PROTECT.
OFFICE OF AIR QUALITY

1995 AUG 30 A 11: 04

STATE OF WEST VIRGINIA
SECRETARY OF STATE

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

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

TO: Tammy Mowrer

AGENCY: DEP- Air Quality

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: August 28, 1995

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 38 TITLE: 45 DEP- Air Quality

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

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

SIGNED: Tanna S. Mowrer

TITLE OF PERSON SIGNING: Administrative Secretary

DATE: November 20, 1995

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Nov 27 2 54 PM 1995

FILED