



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Air Quality TITLE-SERIES: 45-38
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: Yes
RULE NAME: 45-38 (Repeal of) Provisions for Determination of Compliance with Air Quality Management Rules

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §22-5-4(a)(4) authorizes the director to promulgate legislative rules relating to the control of air pollution. This rule clarifies the types of data that may be used by the owner of a facility or by the agency to determine whether the facility is in compliance with or in violation of the emission standard.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/5/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/10/2018

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: Yes

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Legal advertisement of public notice published 6/8/18 in the Charleston Newspapers
Public notice published 6/8/18 in the WV State Register
Public notice posted on the Department of Environmental Protection website
Public notice posted on the Division of Air Quality website
Public notice sent to the DEP mailing list

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule is proposed for repeal in its entirety because the circumstances that initially required this rule no longer exist. The purpose was to clarify the types of data that could be used by the owner of a facility or by the agency to determine whether the facility was in compliance with or in violation of the emission standard. This rule was originally developed in response to an Enhanced Monitoring SIP Call by the EPA. The EPA subsequently included those SIP Call requirements under other federal programs for which West Virginia has corresponding state rules.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is exempt from the Regulatory Moratorium of Executive Order 2-18 under condition 3(n), repealing existing rules.

Proposal of this rule is required for its repeal.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed repeal of this rule should not impact revenues of state government.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The proposed repeal of this rule should not impact costs of state government, nor should it have an economic impact on the state or its residents.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

None.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Tammy L Mowrer -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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

~~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. — April 28, 1995.~~

~~1.4. Effective Date. — May 1, 1995.~~

~~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 no 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 W. Va. Code §22-1-1 et seq.~~

~~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:~~

~~4.1.a. An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.~~

~~4.1.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:~~

~~5.2.a. An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.~~

~~5.2.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.~~

~~5.2.e. 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:~~

~~5.3.a. Any enforceable monitoring or testing methods, including those contained in 40 CFR Parts 51, 60, 61, 63 and 75.~~

~~5.3.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.~~