

US EPA ARCHIVE DOCUMENT



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West Virginia Department of Environmental Protection

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April 21, 2003

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APR 28 2003

Air Protection Division (2003 11)

Judith M. Katz, Director
Air Protection Division, (3AP00)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Division of Air Quality -- Final NSPS and NESHAP Rules 45CSR16 and 45CSR34

Dear Mrs. Katz:

Please find enclosed copies of the Division of Air Quality's (DAQ's) final rules pertaining to the promulgation of 45CSR16 and 45CSR34, which will become effective June 1, 2003. These rules incorporate by reference federal regulations under 40 CFR Parts 60 and 63 as of the following dates:

45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60" - Incorporates federal regulations as of June 1, 2002; and

45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63" - Incorporates federal regulations as of June 1, 2002.

Pursuant to the U.S. Environmental Protection Agency's (EPA's) March 19, 2001 and January 8, 2002 letters and EPA's notice published at 67 FR 15486 granting delegation to West Virginia with respect to those programs, DAQ is hereby providing notice that promulgated final rules 45CSR16 and 45CSR34 adopts these revised NSPS and NESHAP standards and that it intends to enforce them in conformance with the terms of EPA's delegation of authority.

We understand that in accordance with EPA's letters, the new or revised NSPS and NESHAP are "automatically" delegated at the time the State legally adopts such standards.



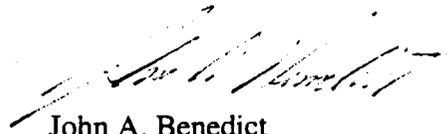
West Virginia Department
of Environmental Protection

"Promoting a healthy environment."

Judith A. Katz
June 21, 2003
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If you have any questions or need additional information, please contact G. Dale Farley at (304) 926-3647.

Sincerely,



John A. Benedict
Director

JAB/jlm

Enclosures

cc: Ray Chalmers, 3AP11
G. Dale Farley
Lisa McClung

**TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY**

**SERIES 16
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
PURSUANT TO 40 CFR PART 60**

§45-16-1. General.

1.1. Scope. -- This rule adopts standards of performance for new stationary sources promulgated by the United States Environmental Protection Agency pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

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

1.3. Filing Date. -- April 21, 2003.

1.4. Effective Date. -- June 1, 2003.

1.5. Incorporation By Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart rule exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 CFR Parts 60 and 65, to the extent referenced in 40 CFR Part 60, effective July 1, 2001, as amended by the Federal Register through June 1, 2002.

1.6. Former Rules. -- This legislative rule amends 45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60" which was filed April 16, 2002, and which became effective July 1, 2002.

§45-16-2. Requirements.

2.1. No person may construct, reconstruct, modify, or operate or cause to be constructed, modified, or operated any source subject to the provisions of 40 CFR Part 60 which results or will result in a violation of this rule.

§45-16-3. Definitions.

3.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

3.2. "Clean Air Act" ("CAA") means 42 U.S.C. §§7401 et seq.

3.3. "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

3.4. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 CFR Part 60. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

§45-16-4. Adoption of Standards.

4.1. Standards. -- The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Parts 60 and 65, to the extent

referenced in 40 CFR Part 60, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 60 and 65, effective July 1, 2001, as amended by the Federal Register through June 1, 2002, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

4.1.a. 40 CFR §60.9 is amended to provide that information shall be available to the public in accordance with W. Va. Code §§22-5-1 et seq., 29B-1-1 et seq., and 45CSR31; or

4.1.b. Subparts B, C, Ca, Cb, Cc, Ce, Ea, Ec, WWW and CCCC of 40 CFR Part 60 shall be excluded.

§45-16-5. Secretary.

5.1. Any and all references in 40 CFR Parts 60 and 65 to the "Administrator" are amended to be the "Secretary" except as follows:

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

5.1.b. where provisions occur which refer to:

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

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

5.1.b.5. alternate monitoring methods;

5.1.b.6. waivers/adjustments to

recordkeeping and reporting;

5.1.b.7. emissions averaging;

5.1.b.8. applicability determinations;
or

5.1.b.9. the authority to require testing under Section 114 of the Clean Air Act, as amended; or

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

§45-16-6. Permits.

6.1. Nothing contained in this adoption by reference shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way be limited or inapplicable.

§45-16-7. Inconsistency Between Rules.

7.1. In the event of any inconsistency between this rule and any other existing rule of the West Virginia Department of Environmental Protection, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

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

SERIES 34
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR
SOURCE CATEGORIES PURSUANT TO 40 CFR PART 63

§45-34-1. General.

1.1. Scope. -- This rule establishes general provisions for national emission standards for hazardous air pollutants (NESHAPS) and other regulatory requirements pursuant to section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the substances listed as hazardous air pollutants (HAP) in or pursuant to section 112(b) of the CAA. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

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

1.3. Filing Date. -- April 21, 2003.

1.4. Effective Date. -- June 1, 2003.

1.5. Incorporation by Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 CFR Parts 63 and 65, to the extent referenced in 40 CFR Part 63, effective July 1, 2001, as amended by the Federal Register through June 1, 2002.

1.6. Former Rules. -- This legislative rule

amends 45CSR34 "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63" which was filed April 16, 2002, and which became effective July 1, 2002.

§45-34-2. Requirements.

2.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, modified, or operated any source subject to the provisions of 40 CFR Part 63 which results or will result in a violation of this rule.

2.2. After the effective date of the state permit program under Title V of the CAA, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Secretary determines that the maximum achievable control technology emission limitation under this rule for new sources will be met.

2.3. After the effective date of the state permit program under Title V of the CAA, the Secretary shall determine and apply case-by-case maximum achievable control technology standards to existing sources categorized by the Administrator pursuant to section 112(c)(1) of the CAA for which the Administrator has not promulgated emission standards in accordance with sections 112(d) and 112(e) of the CAA.

2.4. Prior to constructing, reconstructing or modifying any facility subject to this rule, the owner or operator shall obtain a permit in accor-

45CSR34

dance with the applicable requirements of 45CSR13, 45CSR14, 45CSR30 and this rule.

§45-34-3. Definitions.

3.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

3.2. "Clean Air Act" ("CAA") means 42 U.S.C. §§7401 et seq.

3.3. "Hazardous air pollutant" means any air pollutant listed pursuant to section 112(b) of the CAA as of June 1, 2001.

3.4. "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

3.5. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 CFR Part 63. Words and phrases not defined therein shall have the meaning given to them in federal Clean Air Act.

§45-34-4. Adoption of Standards.

4.1. The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Parts 63 and 65, to the extent referenced in 40 CFR Part 63, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 63 and 65, effective July 1, 2001, as amended by the Federal Register through June 1, 2002, for the purposes of implementing a program for emission standards for hazardous air pollutants for source categories, except as follows:

4.1.a. 40 CFR §63.15 is amended to provide that information shall be available to the public in accordance with W.Va. Code §§22-5-1 et seq., 29B-1-1 et seq., and 45CSR31; or

4.1.b. Any provision related to section 112(r) of the CAA, notwithstanding any requirements of 45CSR30.

§45-34-5. Secretary.

5.1. Any and all references in 40 CFR Parts 63 and 65 to the "Administrator" are amended to be the "Secretary" except as follows:

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

5.1.b. where provisions occur which refer to:

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

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

5.1.b.5. alternate monitoring methods;

5.1.b.6. waivers/adjustments to record-keeping and reporting;

5.1.b.7. emissions averaging; or

5.1.b.8. applicability determinations; or

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

§45-34-6. Permits.

6.1. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall in any way be limited or inapplicable.

§45-34-7. Inconsistency Between Rules.

7.1. In the event of any inconsistency between this rule and any other existing rule of the West Virginia Department of Environmental Protection, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.