US EPA ARCHIVE DOCUMENT

west virginia department of environmental protection

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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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July 11, 2011

Ms. Diana Esher, Director
Air Protection Division
USEPA Region III
1650 Arch Street (3AP00)
Philadelphia, PA 19103-2029

Re: Division of Air Quality – Final 2011 NSPS and NESHAP Rules 45CSR16 and 45CSR34

Dear ~~Ms.~~ Diana Esher:

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 16, 2011. These rules incorporate by reference federal regulations under 40 CFR Parts 60, 61 and 63, as of June 1, 2010:

45CSR16 - "Standards of Performance for New Stationary Sources" - this final 2011 legislative rule incorporates federal new source performance standards pursuant to 40 CFR Part 60; and

45CSR34 - "Emission Standards for Hazardous Air Pollutants" - this final 2011 legislative rule incorporates federal regulations pursuant to 40 CFR Parts 61 and 63.

Pursuant to the U.S. Environmental Protection Agency's direct final rule 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 adopt these revised NSPS and NESHAP standards and that the agency 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, and upon receipt of the notice herein.

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Please feel free to contact Jim Mason with any questions regarding this matter at (304) 926-0499, ext. 1200.

Sincerely yours,

John A. Benedict
Director

JAB/jlm
Enclosures

cc: Ray Chalmers, USEPA 3AP11
Fred Durham, Deputy Director
Renu Chakrabarty, Air Toxics Coordinator

45CSR16

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 16
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

§45-16-1. General.

1.1. Scope. -- This rule establishes and 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). This rule codifies general procedures and criteria to implement the standards of performance for new stationary sources set forth in 40 CFR Part 60. 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 §22-5-4.

1.3. Filing Date. -- June 16, 2011.

1.4. Effective Date. -- June 16, 2011.

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, June 1, 2010.

1.6. Former Rules. -- This legislative rule amends 45CSR16 "Standards of Performance for New Stationary Sources" which was filed April 30, 2010, and which became effective June 1, 2010.

§45-16-2. Definitions.

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

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

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

2.4. 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.

3.1. No person may construct, reconstruct, modify, or operate or cause to be constructed, reconstructed, 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.

§45-16-4. 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 June 1, 2010, 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; and

4.1.b. Subparts B, C, Ca, Cb, Cc, Cd, Ce, Ea, Eb, Ec, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, and FFFF 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 authority to the Secretary;

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

§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 rule of the West Virginia Department of Environmental Protection, the inconsistency shall be resolved by the determination of the Secretary and the 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
AIR QUALITY

SERIES 34
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

§45-34-1. General.

1.1. Scope. -- This rule establishes and adopts a program of national emission standards for hazardous air pollutants (NESHAPS) and other regulatory requirements promulgated by the United States Environmental Protection Agency pursuant to 40 CFR Parts 61, 63 and 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 eight substances listed as hazardous air pollutants in 40 CFR §61.01(a), or one or more of the substances listed as hazardous air pollutants in 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 §22-5-4.

1.3. Filing Date. -- June 16, 2011.

1.4. Effective Date. -- June 16, 2011.

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 61, 63 and 65, to the extent referenced in 40 CFR Parts 61 and 63, effective June 1, 2010.

1.6. Former Rules. -- This legislative rule amends 45CSR34 - "Emission Standards for Hazardous Air Pollutants" which was filed April 30, 2010, and which became effective June 1, 2010.

§45-34-2. Definitions.

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

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

2.3. "Hazardous air pollutant" means any air pollutant listed pursuant to 40 CFR §61.01(a) or section 112(b) of the CAA.

2.4. "Secretary" means the Secretary of the Department of Environmental Protection or other person

2.5. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ıscribed to them in 40 CFR Parts 61 and 63. Words and phrases not defined therein shall have the meaning ;iven to them in federal Clean Air Act.

¡45-34-3. Requirements.

3.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, reconstructed, nodified, or operated any source subject to the provisions of 40 CFR Parts 61 and 63 which results or will esult in a violation of this rule.

3.2. No person may construct or reconstruct any major source of hazardous air pollutants, unless the ;ecretary determines that the maximum achievable control technology emission limitation under 40 CFR Part ;3 and this rule for new sources will be met.

3.3. The Secretary shall determine and apply case-by-case maximum achievable control technology :tandards to existing sources categorized by the Administrator pursuant to section 112(c)(1) of the CAA for vhich the Administrator has not promulgated emission standards in accordance with sections 112(d) and .12(e) of the CAA.

3.4. Prior to constructing, reconstructing or modifying any facility subject to this rule, the owner or ›perator shall obtain a permit in accordance with the applicable requirements of 45CSR13, 45CSR14, 15CSR19, 45CSR30 and this rule.

¡45-34-4. Adoption of Standards.

4.1. The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Parts 61, 63 .nd 65, to the extent referenced in 40 CFR Parts 61 and 63, including any reference methods, performance pecifications and other test methods which are appended to these standards and contained in 40 CFR Parts ;1, 63 and 65, effective June 1, 2010, for the purposes of implementing a program for emission standards 'or hazardous air pollutants, except as follows:

4.1.a. 40 CFR §§61.16 and 63.15 are amended to provide that information shall be available to the ›ublic in accordance with W.Va. Code §§22-5-1 et seq., 29B-1-1 et seq., and 45CSR31;

4.1.b. Subpart E of 40 CFR Part 63 and any provision related to section 112(r) of the CAA, .otwithstanding any requirements of 45CSR30 shall be excluded;

4.1.c. Provisions under Subpart HH of 40 CFR Part 63 which apply to non-major area sources of .azardous air pollutants described in 40 CFR §63.760(b)(2) shall be excluded;

4.1.d. Provisions under Subpart ZZZZ of 40 CFR Part 63 which apply to non-major area sources of .azardous air pollutants described in 40 CFR §63.6585(c) and (d) shall be excluded;

4.1.e. Subparts DDDDDD, LLLLLL, OOOOOO, PPPPPP, QQQQQQ, TTTTTT, WWWWW, ZZZZZ, HHHHHH, BBBBBB, CCCCCC, WWWWWW, XXXXXX, YYYYYY, ZZZZZZ, AAAAAAA, BBBBBBB, CCCCCCC, and DDDDDDD of 40 CFR Part 63 shall be excluded; and

4.1.f. Subparts B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of 40 CFR Part 61 shall be excluded.

§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 authority to the Secretary;

5.1.b. where provisions occur which refer to:

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

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

5.1.b.5. alternate monitoring methods;

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

5.1.b.7. emissions averaging; or

5.1.b.8. applicability determinations; or

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

§45-34-6. Permits.

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

§45-34-7. Inconsistency Between Rules.

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