

HB 4224

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LEGISLATIVE SERVICES DIVISION

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



# ENROLLED

COM. SUB. FOR  
HOUSE BILL No. 4224

(By Delegates DOUGLAS, GALLAGHER,  
FAIRCLOTH, COMPTON, LINCH AND RIGGS)



Passed MARCH 9, 1996

In Effect from Passage

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DIRECTOR OF LEGISLATION  
STATE OF WEST VIRGINIA

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**H. B. 4224**

(BY DELEGATES DOUGLAS, GALLAGHER, FAIRCLOTH,  
COMPTON, LINCH AND RIGGS)

[Passed March 9, 1996; in effect from passage.]

AN ACT to amend and reenact section one, article one, and sections one and two, article three, all of chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; providing that any rules proposed by an executive or administrative agency, and introduced in a bill of authorization by the Legislature, but not authorized by the Legislature are disapproved; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of environmental protection to promulgate legislative rules relating to emission standards for hazardous air pollutants, as filed; authorizing the division of environmental protection to promulgate legislative rules relating to prevention and control air pollution from hazardous waste treatment, storage or

disposal facilities, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to acid rain provisions and permits, as filed; authorizing the division of environmental protection to promulgate legislative rules relating to underground storage tanks, as modified; authorizing division of environmental protection to promulgate legislative rules relating to hazardous waste management regulations, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to surface mining and reclamation regulations, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to coalbed methane wells, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to waste tire management, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to sewage sludge management, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to prevention and control of air pollution from the emission of volatile organic compounds, as amended; authorizing the division of environmental protection to promulgate legislative rules relating to monitoring well design standards, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to solid waste management, as modified and amended; authorizing the environmental quality board to promulgate legislative rules relating to requirements governing water quality standards as modified and amended; authorizing the solid waste management board to promulgate legislative rules relating to development of comprehensive litter and solid waste control plans, as modified.

*Be it enacted by the Legislature of West Virginia:*

That section one, article one, and sections one and two, article three, all of chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.**

**§64-1-1. Legislative authorization.**

1 Under the provisions of article three, chapter  
2 twenty-nine-a of the code of West Virginia, the Legislature  
3 expressly authorizes the promulgation of the rules de-  
4 scribed in articles two through eleven of this chapter, sub-  
5 ject only to the limitations set forth with respect to each  
6 such rule in the section or sections of this chapter autho-  
7 rizing its promulgation. The Legislature declares that all  
8 rules now or hereafter authorized under articles two  
9 through eleven of this chapter are within the legislative  
10 intent of the statute which the rule is intended to imple-  
11 ment, extend, apply or interpret. Legislative rules promul-  
12 gated pursuant to the provisions of articles one through  
13 eleven of this chapter in effect at the effective date of this  
14 section shall continue in full force and effect until  
15 reauthorized in this chapter by legislative enactment, or  
16 until amended by emergency rule pursuant to the provi-  
17 sions of article three, chapter twenty-nine-a of this code.  
18 All proposed legislative rules for which bills of authoriza-  
19 tion have been introduced in the Legislature not specifi-  
20 cally authorized under articles two through eleven of this  
21 chapter are disapproved by the Legislature.

**ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRON-  
MENT TO PROMULGATE LEGISLATIVE  
RULES.**

**§64-3-1. Division of environmental protection.**

1 (a) The legislative rules filed in the state register on the  
2 twenty-eighth day of July, one thousand nine hundred  
3 ninety-five, authorized under the authority of section four,  
4 article five, chapter twenty-two of this code, relating to the  
5 division of environmental protection (emission standards  
6 for hazardous air pollutants pursuant to 40 CFR Part 63,  
7 45CSR34), are authorized.

8 (b) The legislative rules filed in the state register on  
9 the twenty-eighth day of July, one thousand nine hundred  
10 ninety-five, authorized under the authority of section four,  
11 article five, chapter twenty-two of this code, modified by  
12 the division of environmental protection to meet the ob-  
13 jections of the legislative rule-making review committee  
14 and refiled in the state register on the twenty-seventh day  
15 of October, one thousand nine hundred ninety-five, relat-

16 ing to the division of environmental protection (to prevent  
17 and control air pollution from hazardous waste treatment,  
18 storage or disposal facilities, 45CSR25), are authorized.

19 (c) The legislative rules filed in the state register on the  
20 twenty-eighth day of July, one thousand nine hundred  
21 ninety-five, authorized under the authority of section four,  
22 article five, chapter twenty-two of this code, relating to the  
23 division of environmental protection (acid rain provisions  
24 and permits, 45CSR33), are authorized.

25 (d) The legislative rules filed in the state register on  
26 the thirty-first day of July, one thousand nine hundred  
27 ninety-five, authorized under the authority of section six,  
28 article seventeen, chapter twenty-two of this code, modi-  
29 fied by the division of environmental protection to meet  
30 the objections of the legislative rule-making review com-  
31 mittee and refiled in the state register on the eighteenth  
32 day of January, one thousand nine hundred ninety-six,  
33 relating to the division of environmental protection (un-  
34 derground storage tanks, 47CSR36), are authorized.

35 (e) The legislative rules filed in the state register on the  
36 thirty-first day of July, one thousand nine hundred  
37 ninety-five, authorized under the authority of section six,  
38 article eighteen, chapter twenty-two of this code, modified  
39 by the division of environmental protection to meet the  
40 objections of the legislative rule-making review committee  
41 and refiled in the state register on the eighteenth day of  
42 January, one thousand nine hundred ninety-six, relating to  
43 the division of environmental protection (hazardous waste  
44 management regulations, 47CSR35), are authorized.

45 (f) The legislative rules filed in the state register on the  
46 thirty-first day of July, one thousand nine hundred  
47 ninety-five, authorized under the authority of section four,  
48 article three, chapter twenty-two of this code, modified by  
49 the division of environmental protection to meet the ob-  
50 jections of the legislative rule-making review committee  
51 and refiled in the state register on the twenty-third day of  
52 January, one thousand nine hundred ninety-six, relating to  
53 the division of environmental protection (surface mining  
54 and reclamation regulations, 38CSR2), are authorized with  
55 the following amendments:

56 On page 64, section 3.27, after the word "Director" by  
57 striking out the word "may" and inserting in lieu thereof  
58 the word "shall";

59 On page 64, section 3.27, after the word "completed"  
60 by striking out the remainder of the first paragraph and  
61 inserting in lieu thereof the following words:

62 "and reclamation activities are ongoing."

63 On page 156, section 11.6(c)(6)(A) after the word  
64 "operations" by striking out the words "within five (5)  
65 years of the date of SMA approval,";

66 On page 156, section 11.6(c)(6)(B) after the word  
67 "(95-87)" by striking out the words "within five (5) years  
68 of the date of SMA approval,";

69 On page 157, section 11.6(c)(6)(C) after the word  
70 "State" by striking out the words "within five (5) years of  
71 the date of SMA approval,";

72 On page 163, section 11.6(d)(6)(A), after the word  
73 "applicant" by striking out the words "within five (5) years  
74 of the date of SMA approval,";

75 On page 164, section 11.6(d)(6)(B), after the word  
76 "95-87" by striking out the words "within five (5) years of  
77 the date of SMA approval,";

78 On page 164, section 11.6(d)(6)(C), after the word  
79 "wetlands" by striking out the words "within five (5) years  
80 of the date of SMA approval,";

81 On page 169, section 11.6(e)(5)(A), after the word  
82 "95-87" by striking out the words "within five (5) years of  
83 the date of SMA approval,";

84 On page 169, section 11.6(e)(5)(B), after the word  
85 "wetlands" by striking out the words "within five (5) years  
86 of the date of SMA approval,";

87 On page 175, section 11.6(f)(5)(A), after the word  
88 "95-87", by striking out the words "within five (5) years of  
89 the date of SMA approval,";

90 On page 175, section 11.6(f)(5)(B), after the word

91 "enhancement" by striking out the words "of wetlands  
92 within five (5) years of the date of SMA approval,".

93 And,

94 On page 178, section 12.2 subsection (e) by striking  
95 12.2.e in its entirety and inserting in lieu thereof the fol-  
96 lowing:

97 Notwithstanding any other provisions of this rule, no  
98 bond release or reduction will be granted if, at the time,  
99 water discharged from or affected by the operation re-  
100 quires chemical treatment in order to comply with applica-  
101 ble effluent limitations or water quality standards: *Provided*-  
102 *ed*, That the Director may approve a request for Phase I  
103 but not Phase II or III, release if the applicant demon-  
104 strates to the satisfaction of the Director that either:

105 (A) The remaining bond is adequate to assure long  
106 term treatment of the drainage; or

107 (B) The operator has irrevocably committed other  
108 financial resources which are adequate to assure long term  
109 treatment of the drainage: *Provided*, That the alternate  
110 financial resources must be in acceptable form, and meet  
111 the standards set forth in Section 11 of the Act and Sec-  
112 tion 11 of this rule: *Provided, however*, That the alternate  
113 financial arrangements shall provide a mechanism where-  
114 by the Director can assume management of the resources  
115 and treatment work in the event that the operator defaults  
116 for any reason: *And provided further*, That default on a  
117 treatment obligation under this paragraph shall be consid-  
118 ered equivalent to a bond forfeiture, and the operator will  
119 be subject to penalties and sanctions, including permit  
120 blocking, as if a bond forfeiture had occurred.

121 In order to make such demonstration as referenced  
122 above, the applicant shall address, at a minimum, the cur-  
123 rent and projected quantity and quality of drainage to be  
124 treated, the anticipated duration of treatment, the estimated  
125 capital and operating cost of the treatment facility, and the  
126 calculations which demonstrate the adequacy of the re-  
127 maining bond or of the alternate financial resources.

128 "On page sixteen, section 38-2-2.106, after the words

129 'sum of the loading' by inserting the words 'or driving';  
130 and by striking out the words 'in a constructed valley fill,  
131 backfill, dam, or refuse pile' and inserting in lieu thereof  
132 the words 'as determined by acceptable engineering prac-  
133 tices';

134 On page twenty-eight, section 38-2-3.2(e), after the  
135 words 'limited number of minor changes' by inserting the  
136 words 'that do not significantly affect the health, safety or  
137 welfare of the public and';

138 On page thirty-six, section 38-2-3.6(h)(5), after the  
139 words 'as defined in' by striking out the words 'Article 5D  
140 of Chapter 20' and inserting in lieu thereof the words  
141 'Article 14 of Chapter 22';

142 On page thirty-nine, section 38-2-3.8(c), at the end  
143 after the words 'reasonable time for compliance.', by in-  
144 serting a new sentence to read as follows: '*Provided*, That  
145 those structures and facilities, where it can be demonstrat-  
146 ed that reconstruction or revision would result in greater  
147 environmental harm and the performance standards set  
148 forth in the Act and these regulations can otherwise be  
149 met, may be exempt from revision or reconstruction.';

150 On page one hundred seventy-eight, section  
151 38-2-12.2(d), after the words 'until all coal extraction  
152 operations' by inserting the words 'for the permit or incre-  
153 ment thereof', and after the words 'the entire disturbed  
154 area' by inserting the words 'for the permit or increment  
155 thereof';

156 On page one hundred ninety-seven, section  
157 38-2-14.3(c)(2), after the words 'medium is the best' by  
158 inserting the word 'reasonably';

159 And,

160 On page two hundred fifteen, section 38-2-14.14(e)  
161 (4), by striking the sentence 'Runoff from areas above and  
162 adjacent to the fill shall not be allowed to flow onto the fill  
163 surface, and shall be diverted into stabilized diversion  
164 channels, designed and constructed to safely pass the peak  
165 runoff from a 100 year, 24 hour precipitation event.' and  
166 inserting in lieu thereof the sentences 'Surface water run-



167 off from areas above and adjacent to the fill shall be di-  
168 verted into properly designed and constructed stabilized  
169 diversion channels which have been designed using best  
170 current technology to safely pass the peak runoff from a  
171 100 year, 24 hour precipitation event. The channel shall  
172 be designed and constructed to ensure stability of the fill,  
173 control erosion, and minimize water infiltration into the  
174 fill.' "

175 (g) The legislative rules filed in the state register on  
176 the twenty-sixth day of July, one thousand nine hundred  
177 ninety-five, authorized under the authority of section four,  
178 article twenty-one, chapter twenty-two of this code, modi-  
179 fied by the division of environmental protection to meet  
180 the objections of the legislative rule-making review com-  
181 mittee and refiled in the state register on the fourteenth  
182 day of December, one thousand nine hundred ninety-five,  
183 relating to the division of environmental protection  
184 (coalbed methane wells, 38CSR23), are authorized.

185 (h) The legislative rules filed in the state register on  
186 the twenty-third day of November, one thousand nine  
187 hundred ninety-four, authorized under the authority of  
188 section eight, article eleven, chapter twenty of this code,  
189 modified by the division of environmental protection to  
190 meet the objections of the legislative rule-making review  
191 committee and refiled in the state register on the twentieth  
192 day of December, one thousand nine hundred ninety-five,  
193 relating to the division of environmental protection (waste  
194 tire management, 47CSR38G), are authorized.

195 (i) The legislative rules filed in the state register on the  
196 twenty-second day of June, one thousand nine hundred  
197 ninety-five, authorized under the authority of section  
198 twenty, article fifteen, chapter twenty-two of this code,  
199 modified by the division of environmental protection to  
200 meet the objections of the legislative rule-making review  
201 committee and refiled in the state register on the  
202 twenty-second day of December, one thousand nine hun-  
203 dred ninety-five, relating to the division of environmental  
204 protection (sewage sludge management, 47CSR38D), are  
205 authorized with the amendments set forth below:

206 On page seven, section 3.2.2, by striking out the words

207 "Table 3 of this rule will automatically be repealed and  
208 replaced with Table 3A of this rule on December 31, 1997  
209 unless this provision is modified prior to that date.";

210 And,

211 On page seven, section 3.2.2, after the word "rule." by  
212 inserting the following: The director is authorized until  
213 Dec. 31, 1999 to issue variances to this section to allow  
214 land application to soils which exceed the maximum soil  
215 concentrations of metals listed in Table 3 where soil analy-  
216 ses demonstrate that other soil factors, including but not  
217 limited to, soil pH, cation exchange capacity, organic mat-  
218 ter content, or clay content, will limit mobility and avail-  
219 ability of the metals. No later than June 30, 1999, the  
220 director shall propose revisions to Table 3 to adequately  
221 protect soil quality, human health and the environment',

222 And,

223 On page 20, by striking the following from table 3:  
224 "NOTE: Table 3 of this rule will automatically be re-  
225 pealed and replaced with Table 3A of this rule on Decem-  
226 ber 31, 1997 unless the provision of paragraph 3.2.2 of  
227 this rule is modified prior to that date.",

228 And,

229 On page 21, by striking out all of Table 3A.

230 (j) The legislative rules filed in the state register on the  
231 thirty-first day of July, one thousand nine hundred  
232 ninety-five, authorized under the authority of section four,  
233 article five, chapter twenty-two of this code, relating to the  
234 division of environmental protection (to prevent and con-  
235 trol of air pollution from the emission of volatile organic  
236 compounds, 45CSR21), are authorized with the following  
237 amendment:

238 "On pages 170 and 171, by striking out section 40 in  
239 its entirety and inserting in lieu thereof a new section 40,  
240 to read as follows:

**§45-21-40. Other Facilities that Emit Volatile Organic Com-  
pound (VOC).**

1        40.1. Applicability.

2        a. This section 40. applies to any facility that has ag-  
3 gregate maximum theoretical emissions of 90.7 mega-  
4 grams (mg) (100 tons) or more of volatile organic com-  
5 pounds (VOCs) per calendar year in the absence of con-  
6 trol devices; provided that this section 40. applies to any  
7 source or sources within such facility other than those  
8 sources subject to regulation under sections 11. through  
9 39. VOC emissions from sources regulated under sections  
10 11. through 39., but which fall below the applicability  
11 thresholds of these sections, and thus are not subject to the  
12 emissions control standards of these sections, shall be  
13 included in the determination of maximum theoretical  
14 emissions for a facility but shall not be subject to the re-  
15 quirements of this section 40. Emissions from sources  
16 listed in section 40.1.d. shall not be included in the deter-  
17 mination of maximum theoretical emissions for a facility.

18        b. The owner or operator of a coating line or opera-  
19 tion, whose emissions are below this applicability thresh-  
20 hold, shall comply with the certification, recordkeeping,  
21 and reporting requirements of section 40.6.a.

22        c. The owner or operator of a non-coating source,  
23 whose emissions are below this applicability threshold,  
24 shall comply with the certification, recordkeeping, and  
25 reporting requirements of section 40.6.b.

26        d. The requirements of this section 40. shall not apply  
27 to coke ovens (including by-product recovery plants), fuel  
28 combustion sources, barge loading facilities, jet engine test  
29 cells, vegetable oil processing facilities, wastewater treat-  
30 ment facilities, iron and steel production, surface im-  
31 poundments, pits; and boilers, industrial furnaces, and  
32 incinerators having a destruction efficiency of 95 percent  
33 or greater.

34        e. The requirements of this section 40. shall not apply  
35 to any facility bound by an order or permit, enforceable  
36 by the Director, which limits the facility's emissions to less  
37 than 100 tons of VOC per calendar year without the appli-  
38 cation of control devices.

39 40.2. Definitions. — As used in this section 40., all  
40 terms not defined herein shall have the meaning given  
41 them in section 2.

42 a. 'Reasonably available control measures' (also denot-  
43 ed as RACM) means an emission limit or limits that reflect  
44 the application of control technology and/or abatement  
45 techniques or measures that are reasonably available, con-  
46 sidering technological and economic feasibility. Such  
47 emission limits may be considered on a plant-wide basis to  
48 achieve emission reduction requirements in the most cost  
49 effective manner.

50 b. "Fugitive emissions" means those emissions which  
51 could not reasonably pass through a stack, chimney, vent,  
52 or other functionally equivalent opening.

53 40.3. Standards. — The owner or operator of a facility  
54 subject to this section 40. shall:

55 a. Except as provided in section 40.3.b.,

56 1. With respect to any existing non-fugitive emission  
57 source which has maximum theoretical emissions of 6  
58 pounds per hour or more, comply with an emission con-  
59 trol plan established on a case-by-case basis approved by  
60 the Director that meets the definition of reasonably avail-  
61 able control measures (RACM) and achieves at least a 90  
62 percent reduction in emissions below the total (aggregate)  
63 maximum theoretical emissions from all such non-fugitive  
64 emission sources subject to RACM requirements; and

65 2. With respect to each process unit producing a prod-  
66 uct or products, intermediate or final, in excess of 1000  
67 megagrams (Mg) (1,100 tons) per year, regardless of  
68 whether such product or products are listed in 40 CFR  
69 60.489, comply with an emission control plan for fugitive  
70 sources using the methods and criteria of section 37., or  
71 alternative methods and criteria approved by the Director.  
72 The Director may exempt a process unit from fugitive  
73 emission control requirements upon satisfactory demon-  
74 stration that emissions are of minor significance.

75 b. With respect to such sources as described in sections  
76 40.3.a.1. and 40.3.a.2., comply with emission limits and

77 measures based upon an alternative emissions reduction  
78 plan approved by the Director considering technical, eco-  
79 nomic and air quality benefit considerations that, at a  
80 minimum, maintains emission control measures incorpo-  
81 rated as part of any federally approved maintenance plan  
82 for the county or area in which the source is located.

83 c. With respect to any source at a facility subject to this  
84 section 40., which source has maximum theoretical emis-  
85 sions of 6 pounds per hour or more and is constructed,  
86 modified or begins operating after the effective date of  
87 this rule, comply with a control plan developed on a  
88 case-by-case basis approved by the Director that meets the  
89 definition of reasonably available control technology  
90 (RACT) in section 2.60. for both fugitive and non-fugitive  
91 emission sources.

92 40.4. Submissions and Approval of Control Plans

93 a. Within 90 days after the effective date of this rule,  
94 the owner or operator of a facility subject to this section  
95 40. shall submit any required amendments to the  
96 case-by-case RACT control plans previously submitted to  
97 the Director, that revise such control plans to meet the  
98 definition of reasonably available control measures  
99 (RACM).

100 b. Notwithstanding the provisions of section 9.2., the  
101 owner or operator of a facility subject to this rule solely  
102 due to this section 40., that requires a major process  
103 change and/or major capital investment to comply with  
104 RACM requirements, may petition the Director for an  
105 additional extension beyond December 31, 1996, for  
106 compliance certification, and the Director may grant such  
107 extension when warranted. Provided however, such com-  
108 pliance certification date shall be no later than July 31,  
109 1997.

110 c. The Director shall not approve a RACM plan or an  
111 alternative emissions reduction plan under this section 40.  
112 unless such plan includes:

113 1. A commitment to develop and submit a complete  
114 RACT plan to the Director within 180 days of a finding

115 by the Director that a violation of the National Ambient  
116 Air Quality Standard for ozone has occurred within the  
117 county or maintenance area in which the source is located;  
118 and

119 2. A commitment to achieving full implementation of  
120 RACT within 2 years of approval of the RACT plan by the  
121 Director.

122 d. A finding by the Director that a violation of the  
123 National Ambient Air Quality Standard for ozone has  
124 occurred shall be made based upon verification of a moni-  
125 tored ozone standard violation in the county or mainte-  
126 nance area in which the source is located. The three main-  
127 tenance areas (the Huntington area, comprising Cabell and  
128 Wayne counties; the Charleston area, comprising Kanawha  
129 and Putnam counties; and the Parkersburg area, compris-  
130 ing Wood county) shall be treated separately and indepen-  
131 dently for any such finding(s).

132 e. All RACM control plans, RACT control plans, and  
133 alternative emissions reduction plans approved by the  
134 Director pursuant to this section 40. shall be embodied in  
135 a consent order or permit in accordance with 45CSR13 or  
136 45CSR30, as required. A facility owner or operator may  
137 at any time petition the Director to approve revisions to  
138 these plans. The decision concerning said petition shall be  
139 issued by the Director in accordance with 45CSR13 or  
140 45CSR30, as required, or a consent order. Any such revi-  
141 sions shall be subject to the public participation require-  
142 ments of 45CSR13 or 45CSR30.

143 f. The owner or operator of a facility subject to this  
144 section 40. may submit for approval by the Director an  
145 emission control plan that meets the definition of reason-  
146 ably available control technology (RACT) in section 2.60.

147 40.5. Test methods and procedures. — The owner or  
148 operator of any source subject to this section 40. shall  
149 demonstrate compliance with section 40.3. by using the  
150 applicable test methods specified in sections 41. through  
151 46 or by other means approved by the Director. Notwith-  
152 standing the requirements of section 41.1., EPA approval  
153 for alternate test methods to demonstrate compliance shall

154 not be required for sources which are subject solely to  
155 emission control requirements specified in section 40.3.

156 40.6. Reporting and Recordkeeping Requirements for  
157 Exempt Non-Control Technique Guideline (CTG) Sourc-  
158 es.

159 a. An owner or operator of a coating line or operation  
160 that is exempt from the emission limitations in section  
161 40.3. shall comply with the certification, recordkeeping,  
162 and reporting requirements in section 4.2.

163 b. An owner or operator of a non-coating source that  
164 is exempt from the emission limitations in section 40.3.  
165 shall submit, upon request by the Director, records that  
166 document that the source is exempt from these require-  
167 ments.

168 1. These records shall be submitted to the Director  
169 within 30 days from the date of request.

170 2. If such records are not made available, the source  
171 will be considered subject to the limits in section 40.3.

172 40.7. Reporting and Recordkeeping Requirements for  
173 Subject Non-CTG Coating Sources. — An owner or oper-  
174 ator of a coating line or operation subject to this section  
175 40. and complying with section 40.3. shall comply with  
176 the certification, recordkeeping, and reporting require-  
177 ments in section 4.

178 40.8. Reporting and Recordkeeping Requirements for  
179 Subject Non-CTG, Non-Coating Sources.

180 a. The owner or operator of the subject VOC sources  
181 shall perform all testing and maintain the results of all tests  
182 and calculations required under sections 40.3. and 40.5.  
183 to demonstrate that the subject source is in compliance.

184 b. The owner or operator of the subject VOC source  
185 shall maintain these records in a readily accessible location  
186 for a minimum of 3 years, and shall make these records  
187 available to the Director upon verbal or written request.

188 c. The owner or operator of any facility containing  
189 sources subject to this section 40. shall comply with the

190 requirements in section 5. except that such requirements,  
191 as they apply to sources solely subject to this section 40.,  
192 may be modified by the Director upon petition by the  
193 owner or operator. Any such modified requirements shall  
194 be embodied in the facility's control plan (RACM, RACT  
195 or alternative plan) and reflected in the associated consent  
196 order or permit issued pursuant to 45CSR13 or  
197 45CSR30.' "

198 (k) The legislative rules filed in the state register on  
199 the twenty-seventh day of July, one thousand nine hun-  
200 dred ninety-five, authorized under the authority of section  
201 five, article twelve, chapter twenty-two of this code, modi-  
202 fied by the division of environmental protection to meet  
203 the objections of the legislative rule-making review com-  
204 mittee and refiled in the state register on the seventeenth  
205 day of January, one thousand nine hundred ninety-six,  
206 relating to the division of environmental protection (moni-  
207 toring well design standards, 47CSR60), are authorized.

208 (l) The legislative rules filed in the state register on the  
209 thirty-first day of July, one thousand nine hundred  
210 ninety-five, authorized under the authority of section five,  
211 article fifteen, chapter twenty-two of this code, modified  
212 by the division of environmental protection to meet the  
213 objections of the legislative rule-making review committee  
214 and refiled in the state register on the twenty-fourth day of  
215 January, one thousand nine hundred ninety-six, relating to  
216 the division of environmental protection (solid waste man-  
217 agement, 47CSR38), are authorized with the following  
218 amendments:

219 "On page 37, subdivision 3.8.4, after the words 'from  
220 the uppermost' by striking the word 'significant.'

221 On page 142, by striking the existing subdivision  
222 4.11.2.c.A and inserting in lieu thereof the following:

223 **4.11.2.c.A**

224 The monitoring frequency for all constituents listed in  
225 Appendix I of this rule, must be at least twice a year dur-  
226 ing the active life of the facility, including closure and the  
227 post-closure periods. The director may require more fre-



228 quent monitoring on a site-specific basis by considering  
229 aquifer flow rate and existing quality of the groundwater.'

230 On page 148, by striking the existing subdivision  
231 4.11.3.i.A. and inserting in lieu thereof the following:

232 **'4.11.3.i.A.**

233 The director may consider an alternative groundwater  
234 protection standard in consultation with the environmental  
235 quality board pursuant to 47CSR57 for constituents for  
236 which water quality standards have not been established.'

237 On page 151, subdivision 4.11.5., by following the  
238 words 'any applicable groundwater quality protection  
239 standards' by inserting the words 'and/or background  
240 groundwater quality, pursuant to the requirements of the  
241 Groundwater Protection Act, WVC §22-12-1 et seq.'

242 On page 152, subdivision 4.11.6.b.A., by following  
243 the words 'Be protective of human health and the environ-  
244 ment' inserting the words 'and maintain existing ground-  
245 water quality, pursuant to the requirements of the Ground-  
246 water Protection Act, WVC §22-12-1 et seq.'

247 On page 154, subdivision 4.11.6.d.B.(f), by striking  
248 the words 'Resource value of the aquifer' and inserting in  
249 lieu thereof the words 'The hydrogeologic characteristics  
250 of the facility and the surrounding land,'

251 On page 154, subdivision 4.11.6.d.B(f).(e) by striking  
252 out the words "The hydrogeologic characteristics of the  
253 facility and surrounding land;

254 And, by renumbering and relettering the remaining  
255 subdivisions of the rule.

256 On page 156, subdivision 4.11.7.a.A., by following  
257 the words 'Demonstrate compliance with' inserting the  
258 words 'the Groundwater Protection Act, WVC §22-12-1 et  
259 seq., and/or the"

260 And,

261 On page 173, subdivision 5.4.3, by adding the follow-  
262 ing sentence to the end of the subdivision: 'A class D facil-

263 ity other than a class D-1 solid waste facility shall not  
264 exceed two (2) acres in size.' "

**§64-3-2. Environmental boards.**

1 (a) The legislative rules filed by the environmental  
2 quality board in the state register on the thirty-first day of  
3 July, one thousand nine hundred ninety-five, under the  
4 authority of section four, article three, chapter twenty-  
5 two-b of this code, modified by the environmental quality  
6 board to meet the objections of the legislative rule-making  
7 review committee and refiled in the state register on the  
8 nineteenth day of January, one thousand nine hundred  
9 ninety-six, relating to the environmental quality board  
10 (requirements governing water quality standards,  
11 46CSR1), are authorized with the following amendments:

12 "On page one, section two, by deleting all of subsec-  
13 tion 2.1;

14 On page one by renumbering the following subsec-  
15 tion:

16 On page two, after subsection 2.1, by adding a new  
17 subsection 2.2 to read as follows:

18 '2.2. 'Cumulative' means a pollutant which increases in  
19 concentration in an organism by successive additions at  
20 different times or in different ways';

21 And,

22 On page eight, section five, after the words 'No mixing  
23 zones for human health criteria shall be' by striking out  
24 the remainder of subdivision c. and inserting in lieu there-  
25 of the following:

26 'established on a stream which has a seven (7) day, ten  
27 (10) year return frequency of 5 cfs or less.' "

28 (b) The legislative rules filed in the state register on  
29 the twenty-sixth day of July, one thousand nine hundred  
30 ninety-five, authorized under the authority of section six,  
31 article three, chapter twenty-two-c of this code, modified  
32 by the solid waste management board to meet the objec-  
33 tions of the legislative rule-making review committee and

34 refiled in the state register on the twenty-sixth day of Oc-  
35 tober, one thousand nine hundred ninety-five, relating to  
36 the solid waste management board (development of com-  
37 prehensive litter and solid waste control plans, 54CSR3),  
38 are authorized.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rudy Schoover  
Chairman Senate Committee

Rudy Seacrest  
Chairman House Committee

Originating in the House.

Takes effect from passage.

Harrell B. Adams  
Clerk of the Senate

Bugeny W. Snow  
Clerk of the House of Delegates

Carl Key Smith  
President of the Senate

Carl Albert  
Speaker of the House of Delegates

The within as appeared this the 18<sup>th</sup>  
day of April, 1996

Winston Caperton  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/1/96

Time 11:13am