

**TITLE 45
INTERPRETIVE RULE
BUREAU OF ENVIRONMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY**

**SERIES 31B
CONFIDENTIAL BUSINESS INFORMATION AND EMISSION DATA**

§45-31B-1. General.

1.1. Scope. -- Series 31B provides guidance and clarification concerning the term “types and amounts of pollutants discharged” defined under 45CSR§31-2.4, the Department’s legislative rule entitled “Confidential Information,” and thus what information may not be claimed confidential in accordance with 45CSR§31-6.

1.2. Authority. -- W. Va. Code §§22-5-4; 22-5-10; 29A-1-2(c); and WV 45CSR31.

1.3. Filing Date. -- September 10, 2003.

1.4. Effective Date. -- November 10, 2003.

§45-31B-2. Definitions.

2.1. “Aggregation” means the combining of individual elements, such as equipment, units, throughputs or capacities, into one total.

2.2. “Categorization” means the combining of individual elements, such as materials or chemicals, into one category.

2.3. “Emission data” or “types and amounts of air pollutants discharged” means, with reference to any source of emission of any substance into the air --

2.3.a.

2.3.a.1. Emission data necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any

combination of the foregoing;

2.3.a.2. Emission data necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

2.3.a.3. A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

2.3.b. Notwithstanding subdivision 2.3.a of this subsection, the following information shall be considered to be emission data only to the extent necessary to allow the Secretary to disclose publicly that a source is (or is not) in compliance with an applicable standard or limitation, or to allow the Secretary to demonstrate the feasibility, practicability, or attainability (or lack thereof) of an existing or proposed standard or limitation:

2.3.b.1. Information concerning research, or the results of research, on any project, method, device or installation (or any component thereof) which was produced, developed, installed, and used only for research purposes; and

2.3.b.2. Information concerning any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so

marketed or used.

2.4. “Emissions monitoring and sampling” means real-time monitoring, such as continuous emissions monitors, or statistically valid periodic sampling and monitoring that provides reliable and accurate data on emissions.

2.5. “Parametric monitoring” means combining the use of surrogate parameters and monitoring or sampling.

2.6. “Surrogate parameter” means a value that stands in place of throughput, production or some other variable claimed confidential. The term may include an alternative measure of production or throughput or some other production unit that correlates with production or throughput and with emissions. A surrogate parameter must have a simple direct relationship to the value it replaces.

§45-31B-3. Applicability.

3.1. This rule applies to all information submitted to the Secretary, regardless of the regulatory context, and includes, but is not limited to, information submitted in the permitting, enforcement and emission inventory contexts.

§45-31B-4. What Information Constitutes Emission Data.

4.1. Information or data that is indispensable or essential to determining emissions or location in accordance with subsection 2.3 will be considered emission data and thus non-confidential, unless there is a readily available non-confidential alternative for determining emissions or location. Where there is no readily available non-confidential alternative, the Secretary may approve non-confidential alternatives through the use of aggregation, categorization, surrogate parameters, emissions monitoring or sampling, or parametric monitoring; provided that such use is consistent with applicable rules and standards and results in a practically enforceable method of determining emissions.

4.2. The data elements and types of information listed in Tables 2A through 2D of

Appendix A to Subpart A of 40 C.F.R. Part 51, as further defined in the Glossary in such Appendix, will be considered emission data if the information is found to be necessary to determine emissions or location in accordance with subsection 4.1.

4.3. Information in addition to that listed in the Tables referenced in subsection 4.2 will also be deemed emission data if the information is found to be necessary to determine emissions or location in accordance with subsection 4.1.

4.4. The determination as to what information constitutes emission data will be made by the Secretary on a case-by-case basis upon application of the provisions stated in this rule.

§45-31B-5. Contents of Permit.

5.1. The contents of any permit issued by the Secretary pursuant to 45CSR13, 45CSR14, 45CSR19 or 45CSR30 may not be claimed as confidential. This does not, however, preclude a permit application from containing confidential information.

§45-31B-6. Information Determined Emission Data by EPA.

6.1. Notwithstanding the provisions of this rule, information and data determined to be emission data by EPA in accordance with 40 C.F.R. §2.301 will be deemed emission data by the Secretary; provided that the mere inclusion of information or data in Tables 2A through 2D of Appendix A to Subpart A of 40 C.F.R. Part 51 shall not be considered a determination for purposes of this section where EPA has not made a case-specific determination of confidentiality.