

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

**SERIES 32  
SERIOUS AND MINOR VIOLATIONS OF APPLICABLE RULES**

**§45-32-1. General.**

1.1. Scope. -- The Director hereby promulgates this legislative rule defining "serious violation" and "minor violation" for the violation of any provision of the Act, or for violation of any rules issued pursuant to the Act, or for the violation of any order, agreement, or permit, or any part thereof, issued under the Act.

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

1.3. Filing Date. -- July 7, 1993.

1.4. Effective Date. -- July 7, 1993.

**§45-32-2. Definitions.**

2.1. "Act" or "the Act" means the provisions of W. Va. Code §22-5-1, et seq.

2.2. "Applicable Requirements" means all state, interstate compact, and federal standards and limitations for a source regulated pursuant to a legislative rule, including, but not limited to, emissions limitations, ambient air quality standards, standards of performance, control technology guidelines, and preconstruction review and any standard, term, condition, limitation or requirement contained in any order issued by the Director including consent orders and permits.

2.3. [RESERVED]

2.4. [RESERVED]

2.5. "Director" means the director of the Division of Environmental Protection or his or her designated representative.

2.6. "Division of Environmental Protection" or "DEP" means the Division of Environmental Protection which is created by the provisions of W. Va. Code §22-1-1, et seq.

2.7. "Minor Violation" means any violation of a specific provision of the Act, or rule promulgated under the Act that is not a serious violation as defined in 2.10 and Section 3 of this rule.

2.8. "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature.

2.9. "Risk of Harm" means the level of risk created by the likelihood of exposure, either individual or cumulative, or the actual damage, either individual or cumulative, to public health and the environment caused by a violation.

2.10. "Serious Violation" means those violations outlined as serious and contained in Section 3 of this rule.

**§45-32-3. Serious Violation.**

3.1. Serious violation means:

3.1.a. Any failure or refusal to comply with any final order of the Director issued as provided in the Act;

3.1.b. Any violation specifically designated as a serious violation in any rule of the Director;

3.1.c. Any violation of any National Emission Standard for Hazardous Air Pollutants (NESHAP) emission, monitoring, or substantial procedural requirements for existing NESHAP standards, Best Available Technology (BAT) provisions under 45CSR27 and promulgated Maximum Achievable Control Technology (MACT) requirements;

3.1.d. Any State Implementation Plan (SIP), New Source Performance Standard (NSPS), or NESHAP procedural or monitoring requirements violated repeatedly or chronically including but not limited to failure to test, failure to report, or failure to obtain continuous monitoring data for five percent (5%) or more of the time in a calendar quarter;

3.1.e. Any substantive violation of a judicial order;

3.1.f. Construction and/or operation of a facility without obtaining any necessary construction and/or operating permit(s) required by rules promulgated under the Act;

3.1.g. Avoidance of Prevention of Significant Deterioration (PSD) review while violating an emission limit or permit condition which effects PSD status;

3.1.h. Exceedance of a permitted emission standard above the amount that would classify the source as a nonattainment area major source;

3.1.i. Any reckless, grossly negligent or willful violation of the Act;

3.1.j. Any violation that causes significant harm to humans, animals or plant life;

3.1.k. Any violation of an emissions limitation when the amount of such excess emission is significant as defined under any rule promulgated by the Director;

3.1.l. Any violation that the Director determines is serious after evaluating the violator's culpability and the gravity of such violation as follows:

1.1. Gravity. The Director shall consider and evaluate, where pertinent, and including, but not limited to, the following factors in determining the gravity of a violation:

1.A. Involvement of significant actual or potential harm to the environment or the public health;

1.B. Involvement of toxic or hazardous substances or potential long term effect of the violation;

1.C. The degree to which any emission limitation or ambient standard is exceeded;

1.D. The duration of the violation;

1.E. Program priorities, size of facility, or other pertinent factors;

1.F. Causes a violation of a national ambient air quality standard or a program, plan or an applicable requirement; and

1.G. The degree of willfulness of the violation, defiance, or indifference to the applicable requirement.

1.2. Culpability. The Director shall consider and evaluate, where pertinent, and include the following factors in determining the culpability of a violator:

2.A. The degree of intent or negligence;

2.B. Whether the case involves false reporting of required information or tampering with monitoring devices; and

2.C. Whether the violator has taken remedial measures or mitigated the harm caused by the violation.

1.3. Either the gravity of the violation or the culpability of the violator is sufficient to allow the Director to determine that a violation is serious. Any one factor under either the gravity or

culpability factors may be sufficient to allow the Director to determine that the violation is serious.

3.2. Emissions in excess of those allowed under any rule, permit, or order caused by an act of God or another cause over which an alleged violator has no reasonable control shall not be considered a violation unless the alleged violator knows or should have known of the condition and does not immediately report the condition and act promptly to mitigate or cure the condition.

**§45-32-4. Separate Violations.**

4.1. Each violation of any provision of the applicable requirements thereunder shall constitute a separate and distinct violation.

4.2. Each day during which the violation or failure continues shall be a separate violation.

4.3. For the first minor violation of a specific provision of the Act or rule promulgated thereunder, if the person corrects the violation within such time as was specified in the notice of violation issued by the Director, no civil penalty may be recovered.

**§45-31-5. Severability.**

The provisions of this legislative rule are severable and if any provision or part thereof shall be held invalid, unconstitutional, or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair any other remaining provisions, sections, or parts of this legislative rule or their application to any persons and circumstances.