

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

**SERIES 4  
TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS  
INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN  
OBJECTIONABLE ODOR OR ODORS**

**§45-4-1. General.**

1.1 Scope. -- Series 4 is designed to prevent and control the discharge of pollutants into the open air which causes or contributes to an objectionable odor or odors.

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

1.3. Filing Date. -- August 28, 1967.

1.4. Effective Date. -- October 1, 1967.

**§45-4-2. Definitions.**

2.1. "Air pollutants" means solids, liquids, or gases which, if discharged into the air, will result in a statutory air pollution.

2.2. "Air pollution", 'statutory air pollution' shall have the meaning ascribed to it in W. Va. Code §22-5-2.

2.3. [Reserved]

2.4. "Person" means any and all persons, natural or artificial, including any municipal, public or private corporation organized or existing under the laws of this or any other state or county, and any firm, partnership, or association of whatever nature.

2.5. "Odor" means a sensation resulting from stimulation of the human sense of smell.

2.6. "Objectionable Odor" means in addition to odors generally recognized as being objection-

able, an odor shall be deemed objectionable when in the opinion of a duly authorized representative of the Director, based upon his investigations or his investigations and complaints, such odor is objectionable.

2.7. "Duly Authorized Representative" means the Director or such other agent or employee of the Director who by virtue of special training and/or experience is qualified to make determinations relative to this rule.

Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W. Va. Code §§22-5-1 et seq.

**§45-4-3. Objectionable Odor Prohibited.**

3.1. No person shall cause, suffer, allow or permit the discharge of air pollutants which cause or contribute to an objectionable odor at any location occupied by the public.

3.2. The Barnebey-Cheney Scentometer or any other instrument, device, or technique designated by the Director may be used as a guide in the enforcement of the rule and may be used in the determination of the objectionability of an odor.

**§45-4-4. Accidental and Other Infrequent Emissions, Reporting.**

4.1. Accidental and other infrequent discharges which cause or contribute to objectionable odors will be considered on an individual basis and shall be reported by the person responsible therefore to the Director in the manner to be prescribed by the Director.

**§45-4-5. Notice of Violation.**

5.1. No person shall be considered in violation of this rule unless notified that he is discharging an air pollutant or air pollutants which causes or contributes to an objectionable odor.

5.2. Notification as herein required shall be by registered or certified letter of notice sent to the person at his last known address which notice shall set forth the nature of the violation and require such person to submit a control program within such reasonable time as the Director shall specify.

5.3. The provisions of this section shall not apply to persons operating a control program approved pursuant to Section 6 of this rule.

**§45-4-6. Variance.**

6.1. When a process or operation results in the discharge of an air pollutant or pollutants which causes or contributes to an objectionable odor, an acceptable control program shall be developed and offered to the Director by the person responsible for the discharge of such air pollutant or pollutants. This control program shall be submitted in the manner prescribed by the Director and within such time as shall be fixed by the Director. If such a

control program has been approved by the Director by the issuance of a variance, the person responsible for said discharge shall not be considered to be in violation of this rule in connection with said discharge so long as the program is observed.

6.2. The Director may permit, under emergency circumstances, the discharge of air pollutants which causes or contributes to an objectionable odor under specific conditions for specific time periods. Any person who desires such a variance shall make application to the Director in the manner prescribed by the Director.

**§45-4-7. Exemptions.**

7.1. This rule shall not apply to the following sources of objectionable odor until such time as feasible control methods are developed:

7.1.a. Internal combustion engines.

7.1.b. Normal and necessary operations associated with the production of agricultural products grown on the premises or livestock, dogs, cats, and poultry grown on the premises.