

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

**SERIES 33  
ACID RAIN PROVISIONS AND PERMITS**

**§45-33-1. General.**

1.1. Scope. -- This rule establishes and adopts general provisions and the operating permit program requirements for affected sources and affected units under the Acid Rain Program promulgated by the United States Environmental Protection Agency under Title IV of the Clean Air Act, as amended (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. -- April 28, 2006.

1.4. Effective Date. -- May 1, 2006.

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 this rule incorporates by reference the following provisions: 40 CFR Part 72, "Permits Regulation"; 40 CFR Part 74, "Sulfur Dioxide Opt-Ins"; 40 CFR Part 75, "Continuous Emissions Monitoring"; 40 CFR Part 76, "Nitrogen Oxides Reduction Program"; and 40 CFR Part 77, "Excess Emissions"; effective June 1, 2005.

1.6. Former Rules. -- This legislative rule amends 45CSR33 "Acid Rain Provisions and Permits" which was filed April 21, 2003, and which became effective June 1, 2003.

**§45-33-2. Definitions.**

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency.

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

2.3. "Permitting Authority" means the Secretary of the West Virginia Department of Environmental Protection.

2.4. "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.

2.5. Other words and phrases used in this rule, unless otherwise indicated, will have the meaning ascribed to them in 40 CFR §72.2. Words and phrases not defined therein will have the meaning given to them in federal Clean Air Act.

**§45-33-3. Requirements.**

3.1. No person may construct, modify, or operate or cause to be constructed, modified, or operated an affected source which results or will result in a violation of this rule.

**§45-33-4. Adoption of Standards.**

4.1. The Secretary hereby adopts and incorporates by reference the following provisions of the United States Environmental Protection Agency Acid Rain Program effective June 1,

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2005: 40 CFR Part 72, “Permits Regulation”, including all Subparts and Appendices; 40 CFR Part 74, “Sulfur Dioxide Opt-Ins”, including all Subparts; 40 CFR Part 75, “Continuous Emissions Monitoring”, including all Subparts and Appendices; 40 CFR Part 76, “Nitrogen Oxides Emissions Reduction Program”, including all Appendices; and 40 CFR Part 77, “Excess Emissions”. These provisions are adopted for the purposes of implementing an acid rain program that meets the requirements of Title IV of the federal CAA, as amended.

### **§45-33-5. Inconsistency Between Rules.**

5.1. The provisions of this rule must not be construed as exempting persons subject to this rule from compliance with any other provisions of the CAA, including the provisions of Title I of the CAA relating to applicable National Ambient Air Quality Standards, the State Implementation Plan, or any other rules of the West Virginia Department of Environmental Protection, except as expressly provided under Title IV of the CAA; provided however, that in the event of any inconsistency between the provisions of this rule and any provisions of 45CSR30, the provisions of this rule will take precedence and will govern the issuance, denial, revision, reopening, renewal, and appeal of the Acid Rain provision of an operating permit.