

Form #3

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Stephanie R. Timmermeyer, Secretary

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 27, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Department of Environmental Protection
Division of Air Quality
601 57th Street, S.E.

Charleston, West Virginia 25304
Phone: 304-926-0499 ext. 1237

LEGISLATIVE RULE TITLE: 45CSR8 - Ambient Air Quality Standards

1. Authorizing statute(s) citation W.Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 7, 2006

b. What other notice, including advertising, did you give of the hearing?

Published notice on June 9th in The Charleston Daily Mail and The Charleston Gazette. Posted
on the Department of Environmental Protection's web site under "Calendar of Events".

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 10, 2006

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X

No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 27, 2006

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John A. Benedict, Director
601 57th Street, S.E.
Charleston, WV 25304

Tamra Mowrer, Administrative Secretary
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499

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- g. **IF DIFFERENT FROM ITEM 'f',** please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

James Mason, Technical Analyst II
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499 ext. 1200

Fax: 304 926-0479

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

_____ N/A _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

_____ N/A _____

d. Attach findings and determinations and reasons:

Attached _____ N/A _____

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY
BRIEFING DOCUMENT**

Rule Title: 45CSR8 - "Ambient Air Quality Standards"

A. AUTHORITY: W.Va. Code §22-5-4.

B. SUMMARY OF RULE:

The purpose of this rule is to establish ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to those national primary and secondary National Ambient Air Quality Standards (NAAQS) established by the U.S. EPA.

National primary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator of the U.S. EPA deems necessary to protect the public health and welfare.

The Division of Air Quality (DAQ) is streamlining the regulatory structure by consolidating all of the NAAQS into one rule. Consequently, this rule will repeal and replace 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone" which was filed on April 16, 2002 and became effective on July 1, 2002, and 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed May 19, 2000, and became effective June 1, 2000.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

In accordance with Sections 108 and 109 of the Clean Air Act (CAA), EPA has promulgated air quality criteria and NAAQS standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead. West Virginia has previously met the requirements for State Implementation Plans under Section 110 of the CAA through the NAAQS standards set forth in 45CSR8, 45CSR9 and 45CSR12.

Because litigation involving particulate matter and ozone standards have been resolved and U.S. EPA has promulgated revised NAAQS standards, the DAQ has revised and updated 45CSR8 to contain all six criteria pollutants and their current NAAQS standards as they affect West Virginia, as set forth in 40 CFR §§50.4 through 50.12. In accordance with Section 110(a)(2)(H) of the CAA, the DAQ will submit final rule 45CSR8 as a revision to the State Implementation Plan.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

Since the proposed rule amendments are being made to conform to the federal counterpart rule, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its May 31, 2006 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. Their comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday - May 31, 2006

1:00 p.m. – 3:00 p.m.

601 57th Street, SE, Charleston, WV

West Virginia Room – 3rd Floor

ATTENDEES:

Advisory Council Members:

Larry Harris

Jackie Hallinan

Rick Roberts

Bill Raney (via conference call)

Karen Price

DEP:

Stephanie R. Timmermeyer, Cabinet Secretary

Randy Huffman, Deputy Cabinet Secretary/Director – Division of Mining & Reclamation

Heather A. Connolly, General Counsel

Karen G. Watson, Assistant General Counsel

Ken Ellison, Director - Division of Land Restoration

Lisa McClung, Director – Division of Water and Waste Management

John Benedict, Director – Division of Air Quality

Mike Zeto, WVDEP

Charlie Sturey, WVDEP

Lalena Price, Acting Chief Communication Officer – WVDEP – Public Information Office

James Martin, Chief, WVDEP - Office of Oil & Gas

Jim Mason – WVDEP

Bill Brannon – WVDEP

Carroll Cather – WVDEP

Terrie Sangid – WVDEP

Scott Mandirola – WVDEP

Cliff Whyte – WVDEP

John Morgan – WVDEP

Gary Rogers – WVDEP

Mike Dorsey – WVDEP

Patrick Campbell – WVDEP

Ken Politan – WVDEP

Pam Nixon – WVDEP

VISITORS:

Don Garvin -- WVEC
Allan S. Tweddle -- WVEC
Adam Webster -- WVRC
Tim Mallan -- Appalachian Power
Steve Keen -- Bright Enterprises
Charlie Burd -- IOGA -- WV
Tom Boggs -- WV Chamber

Stephanie R. Timmermeyer, Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 1:00 p.m. Secretary Timmermeyer apologized for short time period with some of the rules getting out to Council.

Proposed rules for the 2007 legislative session are as follows:

60CSR5 -- Antidegradation Implementation Procedures

SUMMARY

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection of State waters, Tiers 1,2,2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process.

COMMENTS

Secretary Timmermeyer - Procedural History -- 444 Streams to 303 - 3.7% of total WV stream miles.

5.6.d. Are these absolute values (§5.6.d 1-4 of rule)?

Yes

Will there be another comment period after filing with Secretary of State's Office?

Yes

Is this the final list?

Yes

So §6.2 is gone?

Yes

Legislature has to approve the Tier 2.5 list according to the law passed last session.

How do we appeal a stream's inclusion on Tier 2.5 list?

9.6 – Not appealable to the board, delisting a stream would require a change by the legislature through a rule change.

Since rulemaking authority has been taken from EQB how do you appeal?

This is like any other rule, EQB has no appellate jurisdiction.

When does it go into effect?

If the Legislature passes the list, we send it to EPA for approval, then it would be effective for reissuance, modifications, and 1st time issuances.

47CSR2 – Requirements Governing Water Quality Standards

SUMMARY

This rule establishes requirements governing surface water quality standards for the waters of the State and establishes standards of purity and quality consistent with public health and the enjoyment thereof, the protection of animal, aquatic and plant life and the expansion of employment opportunities, agricultural expansion and a foundation for healthy industrial development.

COMMENTS

Secretary Timmermeyer -- Overview of nutrients criteria, EPA approved old (46CSR1) Aluminum Standard. Also includes updated list of trout waters.

How were trout streams added?

We relied on DNR's data to come up with the list.

Was it a scientific study or did it include streams where trout are stocked?

The stream must be able to allow trout to survive over time. This does sometimes include stocked streams.

Has problem with some streams listed, believes they are not reproducing streams, simply stocked, wants to see method of gathering data for list

The list is not final, DEP will continue to regulate facilities on such streams. DEP will add and subtract streams as data becomes available.

6 streams are being taken off in this rule because they cannot support trout over time.

How recent are DNR's survey's?

The surveys range from 1975 to present.

We have to maintain waters that "previously sustained trout."

Where is Watershed at in definition?

When permits are issued they are looked at on a case by case basis to assess impact on downstream waters within a watershed (downstream usage protection.)

There is no definition of "water body" in State Code, only "Waters."

33CSR9 - Standards for Beneficial Use of Filtrate From Water Treatment Plants

SUMMARY

This legislative rule establishes a mechanism and requirements for the certification, permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

COMMENTS

Can we give an example?

Such filtrate could have been considered Hazardous Waste in the past, this rule allows for certain applications.

47CSR5A – Rules for Individual State Certification of Activities requiring a Federal Permit

SUMMARY

The proposed amendments to this rule are being made to adopt into rule requirements that have been applied through past practices for coal related activities requiring mitigation and issuance of a 401 State Certification of a 404 Permit. Ratios for monetary compensation for temporary impacts are detailed. Monetary compensation for permanent impacts to wetlands

from coal related activities are made the same as non-coal related. Additional economic and stream measurement information is being requested to be added to the 401 application.

COMMENT

Does this apply to any other industry?

No, it is only coal related.

Wants to know if other industry has similar regs?

Seems contrary to what we submit to Army Corp. We want consistency across all forums. Is this different?

No, it is information contained in other forms.

4.2.f.a WV. Jobs creation

Coal companies are already submitting this information to Coal Development. We use this information so we need to see it too.

Is it on a timeframe? – Can coal meet with DEP?

Secretary Timmermeyer suggested we have another Advisory Council Meeting to give the council additional time to review certain rules.

Bill Raney agrees with Secretary Timmermeyer for the need for another meeting to address some of the rules.

The next Advisory Council Meeting will be scheduled before June 20, 2006.

58CSR5 – Recycling Assistance Grant Program

SUMMARY

Updates and streamlines recycling grant requirements. Establishes rule definitions. Consolidates the type of grants available. Simplifies the grant eligibility criteria. Clarifies uses of grant funding. Clarifies and restructures general conditions and requirements for an applicant and then for a grant recipient. Increases the maximum grant funding levels. Clarifies grant proposal content and submission requirements. Establishes agency review criteria and revises Recycling Assistance Fund Grant Review Committee.

COMMENT

Someone worked really hard on putting this together - Really thinks they did a great job.

The changes are a result of suggestions from grant recipients and the recycling community in general.

45CSR6 – Control of Air Pollution from Combustion of Refuse

SUMMARY

This rule establishes emission standards for particulate matter and requirements for activities involving incineration of refuse which are not subject to, or are exempted from regulation under various federal counterpart regulations for specific combustion source categories. This rule also prohibits (with limited exception) open burning and sets forth the registration, permitting, reporting, testing, emergency, natural disaster and exemption provisions for activities involving the combustion of refuse and land clearing debris.

COMMENT

Rule is just reorganizing and streamlining.

Wholesale look at air rules. Four decades old rule. Needed to take a look at its federal counterparts. We separated them (fed) into Rule 18. Rule 6 covers state regs. Streamlined. Did not change any limits. Left open burning and DOH jobs the same.

Both rules compared old "prevent and control" new "control" why drop the term "prevent" from the rule?

We don't prevent air pollution we control it. There is no other specific reason, DEP just cleaned up the title.

The federal government doesn't use the term "prevent" and we are trying to mirror their rules for consistency.

Does it involve timbering operations?

No.

60CSR3 – Voluntary Remediation and Redevelopment Rule

SUMMARY

The Voluntary Remediation Program proposed rule amendments focus on two primary areas: 1. Incorporating the Uniform Environmental Covenant Act provisions, and 2. Updating the DeMinimis Standard to incorporate recent changes in toxicological profiles posted by EPA for several constituents.

COMMENT

We're adopting Uniform Environmental Covenant Act. We'll have to adopt as they change. Same for DeMinimus Standards (developed by consultant in excel). We've updated the tox profiles.

No questions from Council.

45CSR25 – Control of Air Pollution from Hazardous Waste Treatment Storage and Disposal Facilities.

SUMMARY

This rule establishes and adopts emission standards for the treatment, storage and disposal of hazardous waste promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279, as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards. Any person who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste Management System, the codified federal emission standards, and this rule.

45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

This revised rule incorporates by reference the following provisions of 40 CFR Parts 260, 261, 264, 265, 266 and 270 promulgated as of June 1, 2006: National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Resource Conservation and Recovery Act Burden Reduction Initiative, and Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB.

COMMENT

Revisions to this rule are necessary to maintain consistency with current federal regulations.

Only federal changes this year except for one definition on pathological incinerators.

No further questions.

199CSR1 – Surface Mining Blasting Rule

SUMMARY

These changes are proposed for clarification of definitions, jurisdiction for underground shaft and slope development, and training/educational requirements for pre-blast surveyors and certified blasters. None of which should have any fixcal impact on the state or public above those currently experiencing. Some additional training will be required by those doing pre-blast surveys, but that training will be offered for free by Explosives and Blasting.

COMMENT

Randy Huffman hit on highlight changes and cleanup for this rule:

- 3.2.c. 1000 ft requirement for seismograph
- 3.4. defines where DEP gives up regulatory authority as 40ft.
- 3.9 Pre blast surveyors training requirements.

Is this new or modified requirement?

Modified -- Now requiring additional criteria. DEP/OEB is the approving authority. We offer procedural training only at DEP 4.1.b. Case by case certification for qualifying experience for initial certification.

Would that include the convicted felon requirements?

The convicted felon exclusion remains. Felons can't get a fire marshal's license, or a license from ATF.

Any provision for appeals on the convicted felon prohibition?

Not at this tme.

4.5.d – Show cause why you should be allowed in West Virginia when suspended or revoked in other states.

4.9. – Allows blasting inspector to issue suspension order on site if unsafe conditions exist. 24 hour appeal process. Concerned about air blast and fly rock incidents.

Grammatical errors must be changed before we go out to public notice.

Concerns: New definition for “Other structures” and “habitable dwelling”
Shaft and slope (40 ft)

Other structures or “Protective structure” can house people – habitable dwelling one that can house people (snowbird example)- “shaft and slope” DEP worked with miner's health and safety to develop the distance criteria.

We're (WVCA) probably fine with them.

Does OSM require it?

No. Geology and blast record 3.5 Safety concerns pre-blast surveyors, they don't have to be geologists, but they do need to know what they are blasting.

HOLD OVER FOR NEXT MEETING.

38CSR2 – Surface Mining Reclamation Rule

SUMMARY

38- 3.2.g. Notice of Technical Completeness is new language and is to provide the public an opportunity to review the application once technical review is completed. §38- 5.4.e.1 is removing language that is contrary to returning the natural drainway to its original pattern, profile, and dimensions once drainage control structure is removed. Changes to §38-2-6 removes duplication of rules for Blasting and after this change, all the requirements for blasting will be contained in Surface Mining Blasting Rule, Title 199 Series 1. Changes in §38-14.15.c.2, 14.15.d.1 and 14.15.d.3 are clarifying contemporaneous reclamation rules on excess spoil disposal. The changes in §38- 5.6 and 14.15 removes phase-in compliance schedules and the schedule in 14.15 has long past and the one in 5.6 is due to expire on June 19, 2006. §38-2-25 Coal Slurry Lines is new language and the term slurry as used in this subsection means any mixture of water and solids that are pumped to a disposal area. The purpose of this change is to minimize the potential and the impacts of slurry line spills by providing for secondary containment, monitoring etc.

COMMENT

Creates standards and requirements (§38-2-25) is a new section.

Public review period 3.2.g. – currently the public has no opportunity to comment on a completed application so this rule adds a 15 day comment period in certain circumstances.

Why delete the term “databases” specifically

Some of those databases don't exist. We have our own database now.

Has the current notification timeframe changed?

No, it is the same as using the existing spill line.

What about mining related spills?

Inspectors call spill line within 24 hour period. Companies should call immediately upon discovering a spill.

Is there anyway to sample water for slurry spills?

Currently DEP Inspectors take stream water samples and that data is on file.

Is there anything dangerous in the slurry to the public?

Not usually. We can get you data on existing samples.

Dialysis system are bothered by trace stuff in the water.

Coal fines are usually what kill fish, not the trace chemicals.

HOLD OVER FOR NEXT AC MEETING

47CSR30 – WV/NPDES RULES FOR COAL MINING FACILITIES

SUMMARY

The proposed amendments to this rule are being made to allow general clean-up of sections referencing outdated names of agencies and references to the EQB governing rule making. This rule addresses the Secretary as being the person as head of all actions. References to the "Director" are changed to "Secretary" to eliminate the need to distinguish between the Director of Mining and Reclamation and the Director of Water and Waste Management when issuing a coal related WV/NPDES permit. This rule adds provision for storm-water coverage for certain minimal activities without the requirement for modification through application to the permit. This rule also provides for an advanced approval of transfer of a WV/NPDES Permit to coincide with the advanced approval of the corresponding Article 3 Permit.

COMMENT

Eliminates need to do a NPDES modification permit in certain instances when adding area to an existing permitted area. Reduce paperwork and manpower.

Secretary can override rule when circumstances dictate. Also, there is a provision for advanced approval of a transfer permit in certain circumstances. Consistent with SMCRA.

Why would a permit area be expanded if not to extract minerals?

Haul roads, storage, etc.

Does this do away with any existing public comment period?

No. These small changes wouldn't require a hearing.

HOLD FOR NEXT MEETING.

35CSR3 – Coalbed Methane Wells Rule –

HOLD FOR NEXT MEETING

33CSR20 – Hazardous Waste Management

HOLD FOR NEXT MEETING

45CSR8 – Ambient Air Quality Standards

SUMMARY

The purpose of this rule is to establish ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to those national primary and secondary National Ambient Air Quality Standards (NAAQS) established by the U.S. EPA.

National primary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator of the U.S. EPA deems necessary to protect the public health and welfare.

The Division of Air Quality (DAQ) is streamlining the regulatory structure by consolidating all of the NAAQS into one rule. Consequently, this rule will repeal and replace 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone" which was filed on April 16, 2002 and became effective on July 1, 2002, and 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed May 19, 2000, and became effective June 1, 2000.

COMMENT

This puts all NAAQS in one rule, acts to consolidate and streamline the rule.

Why do away with 2.2?

It's now in 3.1 and adopts federal standards.

Particulates are in this rule. Dr. Popper's (WVU) research shows that particulates damage kid's lungs developmentally and these standards are based on adults. Asthma on the increase and this might exacerbate our kids health.

The federal EPA is currently reviewing fine particulate matter and we will change our standards accordingly based on their rule changes.

45CSR16 – Standards of Performance for New Stationary Sources

SUMMARY

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 CFR Part 60 must comply with the applicable NSPS and this rule.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of June 1, 2006: Standards of Performance for: New and Existing Stationary Sources - Electric Utility Steam Generating Units; Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978, Industrial- Commercial- Institutional Steam Generating Units, Small Industrial- Commercial- Institutional Steam Generating Units; Stationary Gas Turbines.

COMMENT

Standard Update of fed requirements.

No Questions.

45CSR34 – Emission Standards for Hazardous Air Pollutants

SUMMARY

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in section 112(b) of the CAA, or one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporates by reference the NESHAP standards of 40 CFR Parts 61, 63 and 40 CFR Part 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Parts 61 and 63, promulgated as of June 1, 2006. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 63. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Parts 61 or 63 must comply with the applicable NESHAPS and this rule.

This rule will repeal and replace 45CSR15 “Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61” filed April 28, 2006 and effective June 1, 2006, as 45CSR34 will now include all federal NESHAPS under 40 CFR Parts 61 and 63.

The revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2006: Miscellaneous Organic Chemical Manufacturing, Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB, Cellulose Products Manufacturing, Primary Aluminum Reduction Plants, Cross-Media Electronic Reporting, Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j), Primary Copper Smelting, Coke Ovens: Pushing, Quenching, and Battery Stacks, Cellulose Products Manufacturing, Miscellaneous Organic Chemical Manufacturing, Secondary Aluminum Production, Brick and Structural Clay Products Manufacturing, Hazardous Waste Combustors, Exemption of Certain Area Sources From Title V Operating Permit Programs, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List, Miscellaneous Coating Manufacturing, Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration, Surface Coating of Metal Cans, Refractory Products Manufacturing, Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List, Miscellaneous Organic Chemical Manufacturing, Hazardous Waste Combustors, Hydrochloric Acid Production, Industrial Process Cooling Towers, Magnetic Tape Manufacturing Operations, Ethylene Oxide Emissions Standards for Sterilization Facilities, Refractory Products Manufacturing and General Provisions.

COMMENT

Standard update of fed requirements combining 45CSR____ and 45CSR16 into this rule. Will replace Rule 15.

No Questions.

45CSR39 – Control of Annual Nitrogen Oxides Emissions

SUMMARY

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_x Annual Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AA through II, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO_x).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_x reduce annual emissions through the constraint of set budgets. U.S. EPA is specifying that annual NO_x emission reductions be implemented in two phases. The first phase of NO_x reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_x emission reduction requirements are based on controls that are

known to be highly cost effective for electric generating units. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO_x emission allowances from or to other program participants. Reducing upwind NO_x emissions will assist downwind PM_{2.5} and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR39 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity. The CAIR NO_x Ozone Season Trading Program requirements are set forth in 45CSR40.

COMMENT

Standard update of Fed requirements.

CAIR rules

Picking up EPA rules

Are all the cross-outs just picking up federal standards?

Yes.

No other questions.

45CSR40 – Control of Ozone Season Nitrogen Oxides Emissions

SUMMARY

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_x Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO_x).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_x reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO_x emission reductions be implemented in two phases. The first phase of ozone season NO_x reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_x emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO_x emission allowances from or to other program participants. Reducing upwind ozone season NO_x emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO_x SIP Call trading program, existing NO_x SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO_x reduction provisions must be “sunsetting” by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which

effectively “sunset” these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal combustion engines, by retaining the NO_x SIP Call ozone season NO_x emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO_x Annual Trading Program requirements are set forth in 45CSR39.

COMMENT

These changes have they resulted in any change in stringency?

No we are simply streamlining the CAIR rules

We haven’t lost any ground?

No.

45CSR1 – Control of Annual Sulfur Dioxide Emissions

SUMMARY

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR SO₂ Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAA through III, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and sulfur dioxide (SO₂).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO₂ reduce annual emissions based upon the implementation of retirement ratios for SO₂ allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO₂ emission reductions be implemented in two phases. The first phase of SO₂ reductions starts in 2010 and requires retiring SO₂ allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO₂ allowances at a 2.86:1 ratio, and continues thereafter. The SO₂ emissions reductions requirements are based on

controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell SO₂ emission allowances from or to other program participants. Reducing upwind SO₂ emissions will assist downwind PM_{2.5} and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR41 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity.

COMMENT

No questions.

OTHER BUSINESS

Appreciation to Trish White for her work on these rules.

Larry Harris wanted to know about Pocohantas Water Treatment Plant Status? Randy Huffman located Cliff Whyte from DWWM to give him the information.

Trish White will e-mail everyone with next meeting date....

Larry Harris moves we adjourn – Bill Raney seconds.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULESRule Title: 45CSR8 - "Ambient Air Quality Standards"Type of Rule: X Legislative Interpretive ProceduralAgency: Division of Air QualityAddress: 601 57th Street SE
Charleston, WV 25304Phone Number: 926-0475Email: tmowrer@wvdep.org**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed revisions to this rule should cause no additional impact on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

Effect of Proposal	2007 Increase/Decrease (use "-")	2008 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: 45CSR8 - "Ambient Air Quality Standards"

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

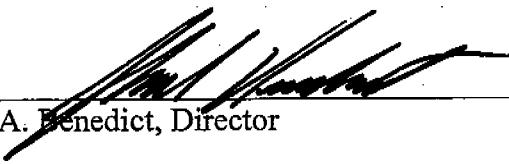
The proposed revisions to this rule will have a minimal effect on the costs to the Division of Air Quality because they impose no additional requirements beyond current federal requirements. Costs are covered under previous cost estimates.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 5, 2006

Signature of Agency Head or Authorized Representative


John A. Benedict, Director

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

SERIES 8
AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES
AND PARTICULATE MATTER

FILED

2006 JUL 27 A 9:31

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§45-8-1. General.

1.1. Scope. -- ~~The purpose of this rule is to establish~~ This rule establishes ambient air quality standards in West Virginia for sulfur oxides, and particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to ~~those the~~ national primary and secondary ambient air quality standards established ~~by the U.S. EPA under Section 109 of the Clean Air Act, and promulgated by the United States Environmental Protection Agency under 40 CFR §§50.4 through 50.12.~~

—National primary ambient air quality standards define levels of air quality which the Administrator ~~of the U.S. EPA~~ judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the ~~administrator of the U.S. EPA~~ Administrator judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator ~~of the U.S. EPA~~ deems necessary to protect the public health and welfare.

1.2. Authority. -- W.Va. Code ~~§22-5-1 et seq.~~ §22-5-4.

1.3. Filing Date. -- April 16, 2002.

1.4. Effective Date. -- July 1, 2002.

1.5. Repeal of former rules. -- This rule shall repeal and replace 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone" which was filed on April 16, 2002 and became

effective on July 1, 2002, and 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed May 19, 2000, and became effective June 1, 2000.

~~1.5. 1.6.~~ Former Rules. -- This legislative rule amends 45CSR8 - "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter" which was filed on ~~May 19, 2000~~ April 16, 2002 and became effective on ~~June 1, 2000~~ July 1, 2002.

§45-8-2. ~~Anti-Degradation Policy.~~

2.1. ~~Pursuant to the best interests of the State of West Virginia, it is the objective of the Secretary to obtain and maintain the cleanest air possible, consistent with the best available technology.~~

2.2. ~~Where the present ambient air is of better quality than the established standards, the Secretary will develop long-range plans to protect the difference between the present quality and the established standards. The plans will be based upon the best available forecasts of probable land and air uses in these areas of high air quality.~~

2.3. ~~The air quality of these areas will not be lowered unless it has been clearly demonstrated to the Secretary that such a change is justifiable as a result of necessary economic or social development and will not result in statutory air pollution. This will require that any industrial, public, or private project or development which could constitute a new source of air pollutants, within an area of such high air quality, provide the best practicable control available under existing technology as part of the initial project or development.~~

§45-8-3 §45-8-2. Definitions.

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

~~3-1: 2.2.~~ "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.

~~3-2: 2.3.~~ "Air Pollution"; or 'statutory air pollution', shall have the meaning ascribed to it in W.Va. Code §22-5-2.

2.4. "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

~~3-3: 2.5.~~ "Ambient Air Quality Standards" means the numerical expression of a specified concentration level for a particular air pollutant in the ambient air and the time averaging interval over which that concentration level is measured.

2.6. "Clean Air Act" or "CAA" means the federal Clean Air Act, as amended, 42 U.S.C. §7401 et seq.

2.7. "Equivalent method" means a method of sampling and analyzing the ambient air for an air pollutant that has been designated as an equivalent method in accordance with 40 CFR Part 53; it does not include a method for which an equivalent method designation has been cancelled in accordance with 40 CFR §53.11 or 40 CFR §53.16.

2.8. "Ozone" means the triatomic oxygen molecule (O₃), a very reactive form of oxygen.

~~3-4: 2.9.~~ "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.10. "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.

2.11. "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

~~3-5: 2.12.~~ "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

2.13. "Reference method" means a method of sampling and analyzing the ambient air for an air pollutant that is specified as a reference method in an appendix to this part, or a method that has been designated as a reference method in accordance with 40 CFR Part 53; it does not include a method for which a reference method designation has been cancelled in accordance with 40 CFR §53.11 or 40 CFR §53.16.

~~3-6: 2.14.~~ "Secretary" means the secretary of the department of environmental protection Secretary of the Department of Environmental Protection or such other person to whom the secretary Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.15. 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. and 40 CFR §50.1. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

§45-8-3. Anti-Degradation.

3.1. The promulgation of primary and secondary ambient air quality standards shall not be considered in any manner to allow significant deterioration of existing air quality in any portion of West Virginia.

§45-8-4. Ambient Air Quality Standards.

4.1. The Standards for Sulfur Oxides. -- No person shall allow emissions of sulfur oxides to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary and secondary ambient air

quality standards shall not be exceeded:

4.1.a. Sulfur Dioxide

~~4.1.a.1. Primary Standard~~

~~4.1.a.1.A. Annual Arithmetic Mean Concentration. -- The level of the annual primary standard for sulfur oxides is 0.030 parts per million (ppm) and 80 micrograms per cubic meter (0.003 parts per million) ($\mu\text{g}/\text{m}^3$), not to be exceeded in a calendar year. The annual arithmetic mean shall be rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm shall be rounded up).~~

~~4.1.a.1.B. 4.1.b. Maximum 24-Hour Concentration. -- The level of the 24-hour primary standard for sulfur oxides is 0.14 ppm (365 micrograms per cubic meter (0.14 ppm) = $\mu\text{g}/\text{m}^3$), not to be exceeded more than once per calendar year. The 24-hour averages shall be determined from successive non-overlapping 24-hour blocks starting at midnight each calendar day and shall be rounded to two decimal places (fractional parts equal to or greater than 0.005 ppm shall be rounded up).~~

~~4.1.c. To demonstrate attainment with the sulfur oxides primary standards in subdivisions 4.1.a and 4.1.b, the annual arithmetic mean and the second-highest 24-hour averages must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 24-hour block average shall be considered valid if at least 75 percent of the hourly averages for the 24-hour period are available. In the event that only 18, 19, 20, 21, 22, or 23 hourly averages are available, the 24-hour block average shall be computed as the sum of the available hourly averages using 18, 19, etc. as the divisor. If fewer than 18 hourly averages are available, but the 24-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding in subdivision 4.1.b, then this shall be considered a valid 24-hour average. In this case, the 24-hour block average shall be computed as the sum of the available hourly averages divided by 24.~~

~~4.1.a.2. Secondary Standard~~

~~4.1.a.2.A. 4.1.d. Maximum Three (3) Hour Concentration. -- The level of the 3-hour secondary standard for sulfur oxides is 0.5 ppm, (1300 micrograms per cubic meter (0.5 ppm) = $\mu\text{g}/\text{m}^3$), not to be exceeded more than once per year. The 3-hour averages shall be determined from successive non-overlapping 3-hour blocks starting at midnight each calendar day and shall be rounded to one decimal place (fractional parts equal to or greater than 0.05 ppm shall be rounded up).~~

~~4.1.e. To demonstrate attainment with the sulfur oxides secondary standard in subdivision 4.1.d, the second-highest 3-hour average must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 3-hour block average shall be considered valid only if all three hourly averages for the 3-hour period are available. If only one or two hourly averages are available, but the 3-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding in subdivision 4.1.d, then this shall be considered a valid 3-hour average. In all cases, the 3-hour block average shall be computed as the sum of the hourly averages divided by three.~~

~~4.1.b. Particulate Matter Primary and Secondary Standards~~

~~4.1.b.1. PM_{10}~~

~~4.2. Standards for Particulate Matter. -- No person shall allow emissions of particulate matter to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary and secondary ambient air quality standards:~~

~~4.1.b.1.A. 4.2.a. PM_{10} Maximum Annual Arithmetic Mean Concentration. -- The level of the primary and secondary annual standards for PM_{10} is 50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) $\mu\text{g}/\text{m}^3$. The standards are attained where when the expected annual arithmetic mean concentration, in accordance with Appendix K of 40 CFR Part 50, is less than or equal to 50 $\mu\text{g}/\text{m}^3$~~

$\mu\text{g}/\text{m}^3$.

~~4.1.b.1.D:~~ 4.2.b. PM_{10} Maximum 24-Hour Average Concentration. -- The level of the primary and secondary 24-hour standards for PM_{10} is 150 micrograms per cubic meter ($150 \mu\text{g}/\text{m}^3$) $\mu\text{g}/\text{m}^3$. The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above $150 \mu\text{g}/\text{m}^3$, as determined in accordance with Appendix K of 40 CFR Part 50, is less than or equal to one.

4.2.c. $\text{PM}_{2.5}$ Maximum Annual Arithmetic Mean Concentration. -- The level of the annual primary and secondary standards for $\text{PM}_{2.5}$ are $15.0 \mu\text{g}/\text{m}^3$. The standards are met when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to $15.0 \mu\text{g}/\text{m}^3$.

4.2.d. $\text{PM}_{2.5}$ Maximum 24-Hour Average Concentration. -- The level of the 24-hour primary and secondary standards for $\text{PM}_{2.5}$ are $65 \mu\text{g}/\text{m}^3$. The standards are met when the 98th percentile 24-hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to $65 \mu\text{g}/\text{m}^3$.

4.3. Standards for Carbon Monoxide. -- No person shall allow emissions of carbon monoxide to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary ambient air quality standards:

4.3.a. Maximum Eight (8) Hour Average Concentration. -- The level of the primary 8-hour standard for carbon monoxide is 9 ppm and $10 \text{ mg}/\text{m}^3$, not to be exceeded more than once per year. An 8-hour average shall be considered valid if at least 75 percent of the hourly average for the 8-hour period are available. In the event that only six (or seven) hourly averages are available, the 8-hour average shall be computed on the basis of the hours available using six (or seven) as the divisor.

4.3.b. Carbon Monoxide Maximum One (1) Hour Average concentration. -- The level of the primary 1-hour standard for carbon monoxide is

35 ppm ($40 \text{ mg}/\text{m}^3$), not to be exceeded more than once per year.

4.3.c. When summarizing data for comparison with the primary carbon monoxide standards under subdivisions 4.3.a and 4.3.b, averages shall be stated to one decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

4.4. Standards for Ozone. -- No person shall allow emissions of ozone to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary and secondary ambient air quality standards:

4.4.a. One-Hour Primary and Secondary Standards. -- The level of the one (1) hour primary and secondary ambient air quality standards for ozone is 0.12 ppm ($235 \mu\text{g}/\text{m}^3$). The standards are attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm ($235 \mu\text{g}/\text{m}^3$) is equal to or less than one (1), as determined by Appendix H to 40 CFR Part 50.

4.4.b. Eight-Hour Primary and Secondary Standards. -- The level of the eight (8) hour primary and secondary ambient air quality standards for ozone is 0.08 ppm , daily maximum 8-hour average. The 8-hour primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm , as determined in accordance with Appendix I to 40 CFR Part 50.

4.5. Revocation of One-Hour Ozone Standards. -- Except as provided in subsection 4.6, the one-hour primary and secondary ambient air quality standards for ozone under subdivision 4.4.a are revoked effective June 15, 2005 for all areas in West Virginia except for Berkeley and Jefferson counties.

4.6. Maintenance Areas for the One-Hour Ozone Standards. -- The Charleston, Greenbrier

County, Huntington-Ashland, and Parkersburg areas are maintenance areas for the one-hour primary and secondary ambient air quality ozone standard under subdivision 4.4.a for purposes of 40 CFR Part 51, Subpart X.

4.7. Standards for Nitrogen Dioxide. -- No person shall allow emissions of nitrogen dioxide to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary and secondary ambient air quality standards:

4.7.a. Maximum Annual Arithmetic Mean Concentration. -- The level of the annual primary and secondary standards for nitrogen dioxide is 0.053 ppm and 100 $\mu\text{g}/\text{m}^3$. The standards are attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm must be rounded up). To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

4.8. Standards for Lead. -- No person shall allow emissions of lead and its compounds, measured as elemental lead, to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary and secondary ambient air quality standards:

4.8.a. Maximum Arithmetic Mean Concentration. -- The level of the primary and secondary ambient air quality standard for lead and its compounds, measured as elemental lead by a reference method based on Appendix G of 40 CFR Part 50, or by an equivalent method, are 1.5 $\mu\text{g}/\text{m}^3$, averaged over a calendar quarter.

§45-8-5. Methods of Measurement.

5.1. ~~PM₁₀ concentrations~~ For the purpose of determining attainment of the primary and secondary PM₁₀ standards under subdivisions 4.2.a and 4.2.b, particulate matter shall be

measured in the ambient air as ~~particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers~~ PM₁₀ by:

5.1.a. ~~a~~ A reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or

5.1.b. ~~an~~ An equivalent method designated in accordance with 40 CFR Part 53.

5.2. ~~Sulfur dioxide concentrations~~ For the purpose of determining attainment of the primary and secondary sulfur oxides standards under subsection 4.1, sulfur oxides shall be measured in the ambient air as sulfur dioxide by:

5.2.a. ~~a~~ The reference method based on described in Appendix A of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or

5.2.b. ~~an~~ An equivalent method designated in accordance with 40 CFR Part 53.

5.3. For the purpose of determining attainment of the primary and secondary PM_{2.5} standards under subdivisions 4.2.c and 4.2.d, particulate matter shall be measured in the ambient air as PM_{2.5} by:

5.3.a. A reference method based on Appendix L of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or

5.3.b. An equivalent method designated in accordance with 40 CFR Part 53.

5.4. For the purpose of determining attainment of the primary carbon monoxide standards under subsection 4.3, carbon monoxide concentrations shall be measured in the ambient air by:

5.4.a. A reference method based on Appendix C of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or

5.4.b. An equivalent method designated in accordance with 40 CFR Part 53.

5.5. For the purpose of determining attainment of the primary and secondary ozone standards under subsection 4.4, ozone concentrations shall be measured in the ambient air by a reference method based on Appendix D to 40 CFR Part 50 and designated in accordance with 40 CFR Part 53.

5.6. For the purpose of determining attainment of the primary and secondary nitrogen dioxide standards under subsection 4.7, nitrogen dioxide concentrations shall be measured in the ambient air by:

5.6.a. A reference method based on Appendix F of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or

5.6.b. An equivalent method designated in accordance with 40 CFR Part 53.

5.7. For the purpose of determining attainment of the primary and secondary lead standards under subsection 4.8, lead concentrations shall be measured as elemental lead in the ambient air by:

5.7.a. A reference method based on Appendix G of 40 CFR Part 50; or

5.7.b. An equivalent method.

§45-8-6. Reference Conditions.

6.1. All measurements of air quality that are expressed as mass per unit volume (e.g., micrograms per cubic meter) other than for the PM_{2.5} standards contained in subdivisions 4.2.c and 4.2.d shall be corrected to a reference temperature of 25°C and a reference pressure of 760 millimeters of mercury (1013.2 millibars). Measurements of PM_{2.5} for purposes of comparison to the standards contained in subdivisions 4.2.c and 4.2.d shall be reported based on actual ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period.

§45-8-6: §45-8-7. Inconsistency Between Rules.

~~6.1: 7.1.~~ In the event of any inconsistency between this rule and any other rule of the Secretary, the resolution of West Virginia Department of Environmental Protection, such the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method, or rule.

ORIGINAL

1

BEFORE THE WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

In the matter of: PROPOSED REVISIONS TO 45CSR8- AMBIENT
AIR QUALITY STANDARDS FOR SULFUR OXIDES
AND PARTICULATE MATTER

Transcript of proceedings had at a public
hearing in the above-styled matter taken by Jo Ann Wilson,
Court Reporter, at the West Virginia Department of
Environmental Protection, Division of Air Quality, Dolly
Sods Conference Room, 601 57th Street, S.E. Charleston,
West Virginia, commencing at 6:20 p.m., on the 10th day of
July 2006, pursuant to notice.

MISSY L. YOUNG, C.C.R.
ATTENDING REPORTER: JO ANN WILSON
POST OFFICE BOX 1322
SISSONVILLE, WEST VIRGINIA 25360
(304) 984-2300

P R O C E E D I N G S

MS. CHANDLER: The purpose of this public hearing is to accept comments on the proposed revisions to 45CSR8 - Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter.

The purpose of this rule is to establish ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to those national primary and secondary National Ambient Air Quality Standards established by the U.S. Environmental Protection Agency. National primary ambient air quality standards define levels of air quality, which the Administrator of the U.S. Environmental Protection Agency judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality, which the Administrator of the U.S. Environmental Protection Agency judges necessary, to protect the public welfare from any known, or anticipated, adverse effects of a pollutant.

Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator of the U.S. Environmental

1 Protection Agency deems necessary to protect the public
2 health and welfare.

3 The Division of Air Quality is streamlining
4 the regulatory structure by consolidating all of the
5 National Ambient Air Quality Standards into one rule.
6 Consequently, this rule will repeal and replace 45CSR9 -
7 "Ambient Air Quality Standards for Carbon Monoxide and
8 Ozone" - which was filed on April 16th, 2002 and became
9 effective on July 1st, 2002; and 45CSR12 - "Ambient Air
10 Quality Standards for Nitrogen Dioxide" - which was filed
11 May 12th, 2000, and became effective June 1st, 2000.

12 Upon authorization and promulgation of
13 revisions to 45CSR8, the DAQ will submit the final rules to
14 the U.S. Environmental Protection Agency as revisions to
15 the State Implementation Plan, pursuant to the Federal
16 Clean Air Act.

17 The floor is now open for comments. Please
18 state your name and any affiliation.

19 MR. TWEDDLE: I'm here, primarily,
20 representing the West Virginia Council, but I'm on several
21 other environmental boards. I should, also, state I am on
22 the Public Energy Authority, at the pleasure of the
23 Governor. So, I'm very involved in this arena.

1 I do have, as an engineer, over 40 years of
2 experience dealing with air quality issues in my native
3 Canada, in California, and then, here. I have experienced,
4 and see, distinctive rollback attempts at the federal level
5 by the EPA. It's very discouraging.

6 So, I'm standing up to every opportunity I
7 can to say there's no reason why West Virginia should roll
8 back any air quality rule, at all. I've never seen
9 economic justification for doing so. There's no need to do
10 it. The statutes, clearly, say that the state of West
11 Virginia can be more stringent than the feds - - Federal
12 EPA.

13 So, there is no - - it's not a cast-in-
14 stone requirement that DEP roll back, always adjust and
15 change, to what the feds say, unless it's administrative,
16 or legal, or language, or things like that. In terms of
17 air quality standards, my posture is that I do not want to
18 see us roll back any rule in terms of emissions, or air
19 quality.

20 I would hope that this rule change - - I
21 gather it brings those other rules all into one. That's
22 what you said. I gather that there will be no muddying of
23 the rules, and standards, in terms of evaluating them

1 separately into any given scenario.

2 I'm particularly concerned about
3 particulates, because the federal standard on particulates
4 isn't good enough. There is an enormous, and rapid, growth
5 in asthma among children, which is occurring in West
6 Virginia, and other states. There's a lot of scientific
7 evidence that illustrates that the very fine particulates,
8 that are really not covered under the existing rules, are
9 the sources, and are very damaging.

10 I wish I had the report, but there was an
11 excellent conference just held in Los Angeles on this very
12 subject. The scientific papers were, overwhelmingly, in
13 favor of much tighter particulate standards for reasons of
14 children's asthma, as well as heart disease, and many other
15 diseases. The scientific evidence is now there that we
16 must tighten those standards.

17 MS. CHANDLER: Any further comments than Mr.
18 Tweddle's?


19 There being nothing further, this public
20 hearing for the proposed revisions to 45CSR8 is concluded.

21 (WHEREUPON, the hearing was
22 concluded at 6:25 p.m.)
23

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a
Certified Court Reporter and Commissioner within and for
the State of West Virginia, duly commissioned and
qualified, do hereby certify that the foregoing, reported
by Jo Ann Wilson, as directed by me, to the best of her
skill and ability, a true and accurate transcript of all
the proceedings had in the aforementioned matter.

Given under my hand and official seal this
20th day of July 2006.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.



west virginia department of environmental protection

NAME (Please Print)

ADDRESS

ORGANIZATION

PHONE/FAX

E-MAIL

COMMENT
YES/NO

Gail Holley	PO Box 2613 Charleston WV 25329						
Tom Mason	WVDEP						NO
Alan Tarell	Self, WNEC						1
Jim Kotcon	444 TMAOVE AVE NW MORGANTOWN WV 26508	WV SIERRA CLUB	574-3322		TKOTCON@WVU.EDU		YES
Vicki Jo Sims	1507 DIXIE ST PO Box 5153 CHS.	Concerned Montanians	444 3370		_____		YES

Sign-In

Proposed Revisions to DAQ Legislative Rules
DEP's Dolly Sods Conference Room
601 57th Street, SE, Charleston
July 10, 2006 6:00 p.m.

July 10, 2006

John A. Benedict, Director
Division of Air Quality
Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304

Re: Comments on Proposed Amendments to Rules 6,
8, 16, 18, 25, 34, 39, 40 and 41

Dear Director Benedict:

These comments are submitted by the West Virginia Manufacturers Association (WVMA) on behalf of its members. The WVMA represents the core of the manufacturing sources and their associates in this state, virtually all of whom are affected by the DAQ's air quality control rules. We appreciate the opportunity to present the following comments on the pending rule changes:

Rule 6

The WVMA endorses the exemption from permitting for temporary air curtain incinerators. These units are highly efficient, clean-burning and mobile. They provide an important tool for small, transient disposal operations, including the possibility of using them to address emergency needs such as flood debris destruction. We also endorse the proposed provisions for the burning of poultry and other animal wastes in the case of an emergency such as for bird flu or other pathogenic animal disease as we recognize that burning or incineration is a very effective means of destroying pathogens. We also agree that it makes sense to move the requirements for other air curtain incinerators to Rule 18 along with other standards for solid waste combustion units.

However, as to section 4.2, we believe that it is not appropriate to take away the exemption on hours of operation for industrial incinerators. These units and flares are operating in almost all cases as air pollution control devices, not as commercial units. As such they are also almost always required by permit to be operated at all times the associated process is in operation for air quality control. We do not believe that the DAQ intends for such sources to shut down their processes as a result of this proposed rule change. Therefore, we request that the exemption for industrial incinerators be maintained. On a related note, we also believe that it is not necessary to require the posting of operating instructions at the location of industrial incinerators under subsection 4.9 as these units are subject to operating standards that are contained in the rules DAQ is adopting by reference and to detailed permit conditions. Such a requirement does not exist for other types of industrial processes and controls.

Rule 8

The WMVA endorses the consolidation of ambient air quality standards into Rule 8. Putting them all in one, easily-identified rule is most helpful to the regulated community and the public.

However, we believe that the introductory text to each standard is misstated. Ambient standards are not emissions limits. They are free-standing air quality levels that must be achieved and maintained. Therefore, in sections 4.1, 4.2, 4.3, 4.4, 4.7, and 4.8,

the phrase: "No person shall allow emissions of..." must be deleted. Sources are obligated not to cause or contribute to a violation of an ambient standard. That does not equate the standard to an emission limit, nor have the standards ever been so applied. The introductory text in each of those subsections should simply say that the following ambient standards are established for the listed pollutants. No reference to emissions should be included. The text should be conformed to that of 40 CFR Part 50.

Also, there are errors in subsections 4.3.a. and 4.3.b. for carbon monoxide standards. They should both be stated in milligrams not micrograms. See 40 CFR §50.8.

Rule 16

The WVMA supports the annual update of these standards for new sources; however, we continue to believe the State rules should be keyed to the federal rules as of July 1 each year in order to synchronize them with the annual republication of the Code of Federal Regulations Title 40.

Rule 18

The WVMA endorses the consolidation of Rule 24 within this Rule and the addition of the provisions for non-temporary air curtain incinerators. We suggest that the wording in section 10 on permits for units as described in subsection 10.1 and 10.3 is awkward at best. These subsections should be amended to clarify their intent since they now refer to past dates in the present tense. The same problem exists in section 12 on compliance dates which are being newly added to the rule but which are already long

past. Also, for all of the subsections in section 1.1, we suggest that the text be modified to add the words “subject to standards” before the words “promulgated by” for clarity.

Rule 25

The WVMA endorses the updating of the standards, but we believe the incorporation by reference date should be July 1, 2006, consistent with Title 40 CFR republication cycle.

Rule 34

The WVMA endorses the consolidation of Rule 15 with Rule 34. We believe that the updated incorporation by reference should be as of July 1, 2006 to correspond to the Title 40 CFR republication date for the ease of reference by regulated sources and the public.

Rules 39, 40 and 41

The WVMA endorses the updating of the CAIR – related series of rules to conform to EPA counterpart rules. As to Rule 40, we urge the DAQ to add text as necessary to allow any existing NO_x ozone season opt-in unit to participate in Rule 40 without allocation penalty where such a unit is already a 45 CSR 1 opt-in unit and maintains that status up until a Rule 40 opt-in permit is issued. This will keep NO_x opt-in units in equity with other existing non-EGU NO_x sources.

We appreciate the efforts of the DAQ to keep all of these rules updated and the move to consolidate clearly-related rules as appropriate. This benefits both the regulated

sources and other users of these rules. Thank you for your consideration of these comments.

Sincerely,

John K. Pitner
WVMA Air Team Leader
West Virginia Manufacturers Association
2001 Quarrier Street
Charleston, WV 25304
(304) 342-2123

Cc: Karen S. Price, President, WVMA
WVMA Air Team



WEST VIRGINIA CHAMBER OF COMMERCE

The Voice of Business in West Virginia

July 10, 2006

John A. Benedict, Director
Division of Air Quality
Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304

Re: Comments to the June 9, 2006 Revisions to Existing Legislative Rules: 8, 16, 18, 25, 34, 39, 40 and 41.

Dear Mr. Benedict:

These comments are filed on behalf of the West Virginia Chamber of Commerce ("the Chamber"). The Chamber is the largest, most influential general business organization, representing all business sectors in every region of the state. Members range from small business enterprises to mid-size manufacturers to tourism destinations to energy companies to Fortune 500 corporations. However, small businesses are the core of our membership -- making up 95 percent of the West Virginia Chamber's companies and firms.

The proposed regulatory amendments to Rules 6, 8, 16, 18, 25, 34, 39, 40 and 41 are of interest to our membership and we offer the following comments:

Rule 6 - Control of Air Pollution from Combustion of Refuse The Chamber supports both the general clean up of the language of this rule and the substantive changes that concern temporary air quality generators and emergencies and natural disasters.

Rule 8 - Ambient Air Quality Standards The Chamber applauds the decision to place all ambient air quality standards within one rule. There appears to be a minor error concerning the carbon monoxide standards in that the reference should be to milligrams rather than micrograms, which should be corrected in the final rule.

Rule 16 - Standards of Performance for New Stationary Sources The Chamber supports the modification of this rule to appropriately reflect the federal program.

Rule 18 - Control Air Pollution from Combustion of Solid Waste As stated previously, the Chamber supports the consolidation of Rule 24 and Rule 18.

Rule 25 - Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal The Chamber supports the modification of this rule to appropriately reflect the federal program.



T. Boggs to J. Benedict
July 10, 2006
Page 2 of 2

Rule 34 – Emission Standards for Hazardous Air Pollutants The Chamber supports the consolidation of Rule 15 with Rule 34 and the modification of this rule to appropriately reflect the federal program.

Rules 39, 40 and 41 – Interstate Transport Rules The Chamber supports the modification of this rule to appropriately reflect the federal program. As noted in comments filed to this rule package by others, the Chamber agrees that it would be appropriate for the DAQ to add text as necessary to allow any existing NO_x ozone season opt-in unit to participate in Rule 40 without allocation penalty where such a unit is already a 45 CSR 1 opt-in unit and maintains that status up until a Rule 40 opt-in permit is issued. This will keep NO_x opt-in units in equity with other existing non-EGU NO_x sources.

We appreciate the opportunity to provide these comments and the efforts of the agency to maintain an up-to-date regulatory program.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Boggs', with a large, stylized loop at the end.

Thomas M. Boggs
Vice President
West Virginia Chamber of Commerce

cc: Stephen G. Roberts, President
Larry Emerson, Chair, Environmental Committee

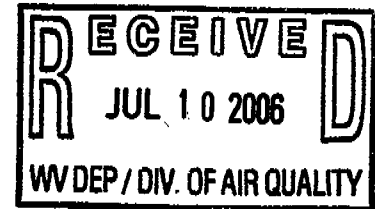
SIERRA CLUB

WEST VIRGINIA CHAPTER

P. O. Box 4142
Morgantown, WV 26504

July 10, 2006

John A. Benedict, Director, Director
Division of Air Quality,
601 57th SE,
Charleston, WV 25304



RE: Comments on 45-CSR-8 "Ambient Air Quality Standards"

Dear Dr. Benedict:

Please accept the following comments regarding proposed changes to 45-CSR-8 on behalf of the West Virginia Chapter of Sierra Club and the WV Environmental Council. In general we support compilation of air standards in a single rule. Current air rules are too fragmented, and disorganized, making it exceedingly difficult for citizens, regulators, or the regulated community to understand.

However, the main point of these comments is to oppose the changes to the antidegradation policy, 45-CSR-8.2. The existing language directs DEP to develop long-range plans to protect existing air quality where that air quality is better than minimum federal standards, and to base those plans on the best available forecasts of probable land uses in that area. While we do not object to the addition of the counterpart federal rule (40-CFR-50.2(c)), the deletion of the existing language leaves the rule without any action-forcing mechanism to achieve anti-degradation goals. Without the current language, the agency would never actually DO anything pro-active to protect air quality. Note: if the federal rule language at 50.2(c) is added, we would further support incorporation of the next clause, 40-CFR-50.2(d), and recommend that it be adapted and incorporated as follows: "The proposal, promulgation, adoption, or revision of national primary and secondary ambient air quality standards shall not prohibit the Secretary from establishing ambient air quality standards which are more stringent than the national standards when necessary to protect existing air quality."

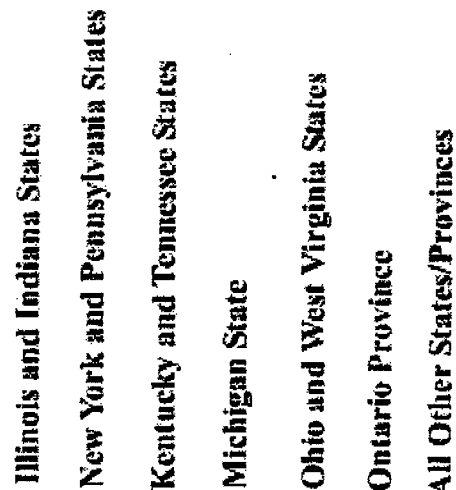
But by themselves, the federal provisions do not achieve the needed goal of protecting existing air quality in areas where present air quality is better than the federal standards. Given that so much of West Virginia already suffers from adverse air pollution impacts, WV-DEP needs to take **pro-active** steps to protect existing air quality. Removing the anti-degradation language from this rule is a step in the wrong direction. Our pristine wilderness and our tourism industry depend on protection of scenic views and the sparkling air quality of our prime recreational areas. We are willing and eager to work with the WV-DEP to begin developing those long-range plans called for in the existing rule language.

Sincerely,

James Kotcon, Chair
State Government Programs

Not Blind Opposition To Progress, But Opposition To Blind Progress

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45CSR8

AMBIENT AIR QUALITY STANDARDS

RESPONSE TO COMMENTS

On June 9, 2006, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on July 10, 2006 to accept oral comments on proposed revisions to legislative rule 45CSR8. Written comments were also accepted through 6:00 PM on Monday, July 10, 2006. Three commenters submitted written comments regarding proposed revisions to rule 45CSR8, and one commenter provided verbal comments. DAQ addresses the written comments below. The verbal comments received did not specifically address any revision in the proposed rule.

I. COMMENTER: West Virginia Manufacturer's Association

COMMENT A. The commenter states, *"The WMVA endorses the consolidation of ambient air quality standards into Rule 8. Putting them all in one, easily-identified rule is most helpful to the regulated community and the public."*

However, we believe that the introductory text to each standard is misstated. Ambient standards are not emissions limits. They are free-standing air quality levels that must be achieved and maintained. Therefore, in sections 4.1, 4.2, 4.3, 4.4, 4.7, and 4.8, the phrase: "No person shall allow emissions of...." must be deleted. Sources are obligated not to cause or contribute to a violation of an ambient standard. That does not equate the standard to an emission limit, nor have the standards ever been so applied. The introductory text in each of those subsections should simply say that the following ambient standards are established for the listed pollutants. No reference to emissions should be included. The text should be conformed to that of 40 CFR Part 50."

RESPONSE A. The DAQ disagrees with the commenter's suggestion to delete the specified language. Notwithstanding any other emission limit or standard, (or lack of same), the owner/operator of a source has an obligation to ensure that its construction and operation does not cause or significantly contribute to violations of ambient air quality standards. Contrary to the statement, "nor have the standards ever been so applied," enforcement actions have been taken when actual and modeling violations occurred. Additionally, in the permitting context, actions have been taken where modeling indicates violations of the standards may occur. However, DAQ has revised the sections to read in a similar manner to the following: "No person shall allow emissions of sulfur oxides to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary and secondary ambient air quality standards."

COMMENT B. The commenter states, *"..... there are errors in subsections 4.3.a. and 4.3.b. for carbon monoxide standards. They should both be stated in milligrams not micrograms. See 40*

CFR §50.8.”

RESPONSE B. DAQ agrees and has revised the rule accordingly.

II. COMMENTS: West Virginia Chamber of Commerce

COMMENT A. The commenter states, *“The Chamber applauds the decision to place all ambient air quality standards within one rule. There appears to be a minor error concerning the carbon monoxide standards in that the reference should be to milligrams instead of micrograms, which should be corrected in the final rule.”*

RESPONSE A. DAQ refers the commenter to Response IB.

III. COMMENTS: Sierra Club and WV Environmental Council

COMMENT A. The commenter states, *“In general we support compilation of air standards in a single rule. Current air rules are too fragmented, and disorganized, making it exceedingly difficult for citizens, regulators, or the regulated community to understand.*

However, the main point of these comments is to oppose the changes to the antidegradation policy, 45-CSR-8.2. The existing language directs DEP to develop long-range plans to protect existing air quality where that air quality is better than minimum federal standards, and to base those plans on the best available forecasts of probable land uses in that area. While we do not object to the addition of the counterpart federal rule (40-CFR-50.2(c)), the deletion of the existing language leaves the rule without any action-forcing mechanism to achieve anti-degradation goals. Without the current language, the agency would never actually DO anything pro-active to protect air quality. Note: if the federal rule language at 50.2(c) is added, we would further support incorporation of the next clause, 40-CFR-50.2(d), and recommend that it be adapted and incorporated as follows: ‘The proposal, promulgation, adoption, or revision of national primary and secondary ambient air quality standards shall not prohibit the Secretary from establishing ambient air quality standards which are more stringent than the national standards when necessary to protect existing air quality.’

But by themselves, the federal provisions do not achieve the needed goal of protecting existing air quality in areas where present air quality is better than the federal standards. Given that so much of West Virginia already suffers from adverse air pollution impacts, WV-DEP needs to take pro-active steps to protect existing air quality. Removing the anti-degradation language from this rule is a step in the wrong direction. Our pristine wilderness and our tourism industry depend on protection of scenic views and the sparkling air quality of our prime recreational areas.....”

RESPONSE A. The intent of the 45CSR8 is to adopt federal air quality standards for the prescribed pollutants. The federal counterpart language does not include an anti-degradation policy

beyond that contained in 40 CFR §50.2(c) which is incorporated into 45CSR8. The DAQ notes that under 45CSR14, the agency examines major source permitting actions to prevent significant deterioration of air quality by requiring the installation of best available control technology, and a demonstration that the sources do not degrade existing air quality in West Virginia or significantly impact Class 1 (protected scenic and recreational) areas. Additionally, the agency believes that 45CSR14 adequately addresses issues regarding protection or degradation of existing air quality. Moreover, 45CSR8 subsection 3.1 and 40 CFR §50.2(c) provide that ambient air quality standards may not be used in any manner to allow significant deterioration of air quality.

With respect to revising the rule to include federal counterpart language under 40 CFR §50.2(d), DAQ notes that, by statute (West Virginia Code §22-5-4(4)), no legislative rule may be more stringent than federal counterpart language unless the agency makes a specific written finding that requires a more stringent approach, based on scientifically supportable evidence. The commenter presents no substantive information that would persuade the agency to make such a finding.

Therefore, DAQ believes that no additional revision is necessary to the rule.

IV. COMMENTER: Allan Twedde

COMMENT A. The commenter asked about the nature of the rule and inquired as to whether the revisions would reduce or allow lower standards of air emissions. The commenter expressed his opinion that the agency should not *"roll back any rule in terms of emissions, or air quality."*

RESPONSE A. DAQ notes the purpose of 45CSR8 is to establish ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to those national primary and secondary National Ambient Air Quality Standards established by the U.S. EPA. No proposed revision to the rule is intended to diminish air quality. The proposed rule actually adds ambient air quality standards for lead, and retain and update standards contained in existing legislation. Therefore, the agency views these revisions as being more stringent than previous versions of rules 45CSR8, 45CSR9 and 45CSR12.