

DEP drops plan to finalize stream list

By Ken Ward Jr.

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State regulators have dropped their plan to finalize a list of protected West Virginia streams, saying they don't want to pick a fight with lawmakers over the issue.

Earlier this year, the Legislature declined to act on the list of more than 300 streams the state Department of Environmental Protection said deserved tougher pollution protections.

DEP Secretary Stephanie Timmermeyer said she planned to finalize the list anyway. Timmermeyer said the DEP had the legal authority to do so.

On Friday, Deputy DEP Secretary Randy Huffman said the agency now plans to start all over.

A new list will be published in draft form. The DEP will accept public comments and then finalize the list. The resulting version will be submitted for legislative review during the 2008 session.

"It was maybe a subversion of the leg-

islative process for us to just go out and file the rule," Huffman said. "It's a legislative process whether you agree or not."

The list in question covers streams that are deemed to qualify for "Tier 2.5" protection under West Virginia's water quality anti-degradation policy.

Under that policy, clean streams are generally supposed to be kept that way. Streams on the Tier 2.5 list could not be degraded by more than 10 percent.

DEP officials had already whittled down the Tier 2.5 list and allowed three separate rounds of public comments. But lawmakers, at the urging of coal companies, timber operators and the Farm Bureau, were slashing dozens of streams from the list.

Originally, the DEP proposed Tier 2.5 protection for about 300 streams, about 4 percent of the waterways in the state, agency officials said.

Don Garvin, lobbyist for the West Virginia Environmental Council, said the DEP's action would help regulated industries gut the stream list.

"It's going to be almost impossible to protect streams in this state," Garvin said.

Huffman said he doesn't believe the DEP ever made a definite decision to move forward without legislative action on the stream list.

"My understanding was that was an option that was on the table at the time," said Huffman, who is running the DEP while Timmermeyer is on maternity leave. "There were a number of options there."

In a March 15 interview, Timmermeyer and DEP spokeswoman Jessica Greathouse said the agency planned to file the final rules, despite legislative inaction.

Timmermeyer cited several state Supreme Court decisions she said supported the DEP's plan.

Under those rulings, she said, lawmakers can approve, reject or amend state agency rules, but she said the Legislature can't veto an agency rule by simply not acting on it at all.

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Form #4

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Stephen R. Turner
Authorized Signature

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

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OFFICE OF THE 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. Repealed provisions. -- The repealed provisions contained in 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone" relating to national ambient air quality

standards for carbon monoxide and ozone, and the repealed provisions of 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide" relating to national ambient air quality standards for nitrogen dioxide have been revised to be consistent with the ambient air quality standards set forth in 40 CFR §§50.8 through 50.11, and are contained in this rule as of the effective date set forth in subsection 1.4.

~~4.5. 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.~~ 2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

~~3.1. 2.2.~~ 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.~~ 2.3. "Air Pollution"; or 'statutory air pollution', shall have the meaning ascribed to it in W.Va. Code §22-5-2.

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

~~3.3. 2.5.~~ 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.~~ 2.6. "Clean Air Act" or "CAA" means the federal Clean Air Act, as amended, 42 U.S.C. §7401 et seq.

~~2.7.~~ 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.~~ 2.8. "Ozone" means the triatomic oxygen molecule (O₃), a very reactive form of oxygen.

~~3.4. 2.9.~~ 2.9. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

~~2.10.~~ 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.~~ 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.~~ 2.12. "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

~~2.13.~~ 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.~~ 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.~~ 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.~~ 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 stan-

dards for PM_{10} is 50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). 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 $\mu\text{g}/\text{m}^3$.

~~4.1.b.1.B.~~ 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 ($\pm 50 \mu\text{g}/\text{m}^3$) $\mu\text{g}/\text{m}^3$. 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. $PM_{2.5}$ Maximum Annual Arithmetic Mean Concentration. -- The level of the annual primary and secondary standards for $PM_{2.5}$ 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. $PM_{2.5}$ Maximum 24-Hour Average Concentration. -- The level of the 24-hour primary and secondary standards for $PM_{2.5}$ 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 mg/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 mg/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. PM_{10} concentrations For the purpose of

determining attainment of the primary and secondary PM_{10} 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 PM_{10} by:

5.1.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 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. 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 equivalent method designated in accordance with 40 CFR Part 53.

5.3. For the purpose of determining attainment of the primary and secondary $\text{PM}_{2.5}$ standards under subdivisions 4.2.c and 4.2.d, particulate matter shall be measured in the ambient air as $\text{PM}_{2.5}$ 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.