

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: "Ambient Air Quality Standards for Sulfur Oxides
and Particulate Matter"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Johnston, Chief

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

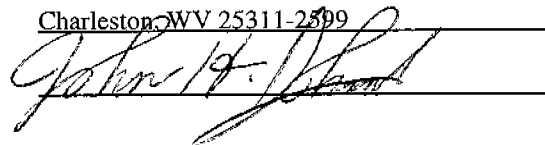
Office Air Quality

1558 Washington Street East

The issues to be heard shall be limited to the proposed rule.

Charleston, WV 25311-2599

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL



3.80



BUREAU OF ENVIRONMENT

10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

Michael P. Miano
COMMISSIONER

June 15, 1998

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

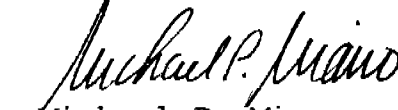
RE: 45CSR8 - "Ambient Air Quality Standards for
Sulfur Oxides and Particulate Matter"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your office as notice of public hearing/comment period.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please contact Carrie Chambers in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

cc: Carrie Chambers
Karen Watson, OAQ

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 45CSR8- "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq.

B. SUMMARY OF RULE:

The purpose of this rule is to establish ambient air quality standards for sulfur oxides and particulate matter, equivalent to those national primary and secondary ambient air quality standards 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.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

In accordance with sections 108 and 109 of the Clean Air Act (CAA), EPA reviewed the air quality criteria and national ambient air quality standards (NAAQS) for particulate matter (PM) and for ozone (O₃). Based on these reviews, EPA revised the standards for both classes of pollutants (July 18, 1997 Federal Register).

With respect to PM, EPA revised the current primary PM₁₀ standards by adding two new primary PM_{2.5} standards to provide increased protection against a wide range of PM-related health effects, including premature mortality and increased hospital admissions and emergency room visits (primarily in the elderly and individuals with cardiopulmonary disease); increased respiratory symptoms and disease (in children and individuals with cardiopulmonary disease such as asthma); decreased lung function (particularly in children and individuals with asthma); and alterations in lung tissue and structure and in respiratory tract defense mechanisms. The revised annual PM_{2.5} standard would be based on the 3-year average of the annual arithmetic mean PM_{2.5} concentrations. The revised 24-hour PM_{2.5} standard would be based on the 3-year average of the 98th percentile of 24-hour PM_{2.5}

concentrations at each monitor within an area. The EPA revised the current 24-hour primary PM₁₀ standard of 150 µg/m³ by replacing the 1-expected-exceedance form with a 99th percentile form, averaged over 3 years at each monitor within an area. The EPA retained the current annual primary PM₁₀ standard of 50 µg/m³. Further, EPA adopted new data handling conventions for calculating 98th percentile values and spatial averages (Appendix K), revised the reference method for monitoring PM as PM₁₀ (Appendix J), and adopted a new reference method for monitoring PM as PM_{2.5} (Appendix L).

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

A federal counterpart to this proposed rule exists. In accordance with the Director's recommendation, and with limited exception, the Office of Air Quality proposes that the rule incorporate by reference the federal counterparts.

Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Director 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:

The proposed amendments to this rule will be reviewed by the Advisory Council during its meeting in July, 1998. Recommendations of the Council and the Director's response to Council's recommendations will be included in the August 3, 1998 filing with the Secretary of State's Office and Legislative Rulemaking Review Committee.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR8 - "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"

Type of Rule: X Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates: The actual revisions to this rule will have no additional economic impact because they impose no additional requirements beyond the current federal requirements.

3. Objectives of these rules: This rule revises the ambient air quality standards for sulfur oxides and particulate matter to conform to those promulgated by the U.S. EPA under the federal Clean Air Act, as amended. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

No impact above that resulting from the currently applicable federal standards.

C. Economic Impact on Citizens/Public at Large.

No impact above that resulting from the currently applicable federal standards.

Date: June 16, 1998

Signature of Agency Head or Authorized Representative

John H. [Signature]

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

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

FILED
JUN 16 10 33 AM '98
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§45-8-1. General.

1.1. Scope. -- ~~In the best interests of the State of West Virginia it is the objective of the Director to obtain and maintain the cleanest air possible, consistent with the best available technology:~~

~~Where the present ambient air is of better quality than the established standards, the Director 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 such areas of high air quality.~~

~~The air quality of these areas will not be lowered unless it has been clearly demonstrated to the Director 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. The purpose of this rule is to establish ambient air quality standards for sulfur oxides and particulate matter, equivalent to those national primary and secondary ambient air quality standards 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.

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

1.3. Filing Date. -- ~~25, 1990 April.~~

1.4. Effective Date. -- ~~April 25, 1990.~~

§45-8-2. Anti-Degradation Policy

2.1. In the best interests of the State of West Virginia it is the objective of the Director 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 Director 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 such 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 Director 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.

§45-8-23. Definitions.

~~23.1.~~ "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.

~~23.2.~~ "Air Pollution", 'statutory air pollution', has the meaning ascribed to it in W. Va. Code §22-5-2.

~~2.3.~~ [Reserved]

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

~~2.53.3.~~ "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

~~3.4.~~ "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

~~2.63.5.~~ "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

~~2.7.~~ "Standard Conditions" means, for the purposes of this regulation, a temperature of 25°C and a pressure of 760 millimeters of mercury column:

~~2.83.6.~~ "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.

§45-8-34. Ambient Air Quality Standards.

~~34.1.~~ The following ambient air quality standards shall not be exceeded at any sampling site:

~~34.1.a.~~ Sulfur Dioxide

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

~~4.1.a.1.A.~~ Annual Arithmetic Mean Concentration - 80 micrograms per cubic meter (0.003 parts per million).

~~4.1.a.1.B.~~ Maximum 24-Hour Concentration - 365 micrograms per cubic meter (0.14 ppm) - not to be exceeded more than once per year.

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

~~4.1.a.2.A.~~ Maximum Three (3) Hour Concentration - 1300 micrograms per cubic meter (0.5 ppm) - not to be exceeded more than once per year.

~~34.1.b.~~ PM₁₀ Particulate Matter Primary and Secondary Standards

~~Annual Arithmetic Mean Concentration - 50 micrograms per cubic meter (ug/m³). The standards are attained where the expected annual arithmetic mean, in accordance with Appendix K of 40 CFR 50, is less than or equal to 50 ug/m³. Maximum 24 Hour Concentration - 150 micrograms per cubic meter (150 ug/m³). The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m³, as determined in accordance with Appendix K of 40 CFR 50, is less than or equal to one.~~

~~4.1.b.1.~~ PM_{2.5}

~~4.1.b.1.A.~~ Annual arithmetic mean concentration of 15 micrograms per cubic meter (ug/m³), attained 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 micrograms per cubic meter (15.0 ug/m³).

~~4.1.b.1.B.~~ Average 24-hour concentration of 65 micrograms per cubic meter (ug/m³), attained 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 micrograms per cubic meter (65 ug/m³).

4.1.b.2. PM₁₀.

4.1.b.2.A. Annual arithmetic mean concentration of 50 micrograms per cubic meter (ug/m³), attained when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 50 micrograms per cubic meter (50 ug/m³).

4.1.b.2.B. Average 24-hour concentration of 150 micrograms per cubic meter (ug/m³), attained when the 99th percentile 24-hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 150 micrograms per cubic meter (150 ug/m³).

§45-8-45. Methods of Measurement.

45.1. PM_{2.5} concentrations shall be measured in the ambient air as particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers by:

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

45.1.b. an equivalent method designated in accordance with 40 CFR Part 53.

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

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

4.15.2.b. an equivalent method designated in accordance with 40 CFR Part 53.

4.25.3. Sulfur dioxide concentrations shall be measured in the ambient air as sulfur dioxide by:

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

4.25.3.b. an equivalent method designated in accordance with 40 CFR Part 53.

§45-8-56. Inconsistency Between Rules.

In the event of any inconsistency between this rule and any other rule of the Director, the resolution of such inconsistency shall be based upon the application of the more stringent provision, term, condition, method, or rule.