

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #4

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JAN 22 2 00 PM '99

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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

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: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE  
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT  
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE  
FILED WITH THE SECRETARY OF STATE.

  
Chief, Office of Air Quality

\$2.60



Executive Office  
10 McJunkin Road  
Nitro, West Virginia 25143-2506  
Telephone 304-759-0515  
Fax 304-759-0509

## West Virginia Bureau of Environment

Cecil H. Underwood  
Governor

Michael P. Miano  
Commissioner

January 22, 1999

Ms. Judy Cooper  
Director  
Administrative Law Division  
Secretary of State's Office  
Capitol Complex  
Charleston, WV 25305

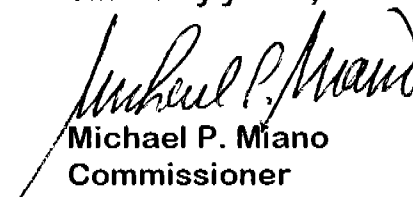
RE: 45CSR8 - "Ambient Air Quality Standards for Sulfur Oxides  
and Particulate Matter"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced agency-approved rule as notice of rule modification with your office and the Legislative Rule-Making Review Committee.

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

Sincerely yours,



Michael P. Miano  
Commissioner

MPM:cc

Attachment

cc: Edward L. Kropp  
Karen Watson  
Carrie Chambers

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JAN 22 2 00 PM '99

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

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

**§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. Pursuant to 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 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 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 or development.

#### §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<sub>2.5</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.~~

~~2.63.5. "PM<sub>10</sub>" 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. ~~PM<sub>10</sub>~~ Particulate Matter Primary and Secondary Standards

~~Annual Arithmetic Mean Concentration - 50 micrograms per cubic meter (ug/m<sup>3</sup>). 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/m<sup>3</sup>. Maximum 24-Hour Concentration - 150 micrograms per cubic meter (150 ug/m<sup>3</sup>). The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m<sup>3</sup>, as determined in accordance with Appendix K of 40 CFR 50, is less than or equal to one.~~

##### 4.1.b.1. ~~PM<sub>2.5</sub>~~

~~4.1.b.1.A. Annual arithmetic mean concentration of 15 micrograms per cubic meter (ug/m<sup>3</sup>), 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/m<sup>3</sup>).~~

~~4.1.b.1.B. Average 24-hour concentration of 65 micrograms per cubic meter (ug/m<sup>3</sup>), attained when the 98<sup>th</sup> 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/m<sup>3</sup>).

4.1.b.2. PM<sub>10</sub>.

4.1.b.2.A. Annual arithmetic mean concentration of 50 micrograms per cubic meter (ug/m<sup>3</sup>), 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/m<sup>3</sup>).

4.1.b.2.B. Average 24-hour concentration of 150 micrograms per cubic meter (ug/m<sup>3</sup>), attained when the 99<sup>th</sup> 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/m<sup>3</sup>).

**§45-8-45. Methods of Measurement.**

45.1. PM<sub>2.5</sub> 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. PM<sub>10</sub> 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.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

**Agency:** Office of Air Quality

**Subject:** Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter

**CSR Cite:** 45CSR8

**Counsel:** JAA

FILED  
JUN 6 9 25 AM '99  
OFFICE OF THE CLERK  
SECRETARY OF STATE  
COMMONWEALTH OF VIRGINIA

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PERTINENT DATES

Filed for public comment: June 16, 1998  
Public comment period ended: July 21, 1998  
Filed following public comment period: July 31, 1998  
Filed LRMRC: July 31, 1998  
Filed as emergency: n/a

**Fiscal Impact:** None.

ABSTRACT

Brief Summary

The amendments to the existing rule updates the state standards for sulfur oxides and particulate matter emissions. The EPA revised the national ambient air quality standards for these pollutants in July of 1997. The changes in the rule reflect these modifications. These standards are established by the EPA to provide a margin of safety to assure the protection of public health from harmful emission levels. The OAQ filed suit objecting to the rules new measuring standards as not being scientifically justified. This case is pending in federal court. The Office of Air Quality has filed the rule changes pending the outcome of the federal litigation to fulfill its statutory requirements of remaining in compliance with current federal requirements. If the OAQ prevails in the suit, the office intends to file emergency rules that reflect those changes.

## Section Summary

Section 1 which provides scope of the rule has been rewritten. The scope of the rule is to provide primary and secondary ambient air quality standards for sulfur oxides and particulate matter. Primary standards define the level of air quality that the EPA judges as necessary, within the adequate margin of safety, to protect the public health. Secondary standards define the levels necessary to protect the public welfare from any known or anticipated effects of the pollutants.

Section 2 which states the anti-degradation policy contained in the current rule has been moved from Section 1.1 to Section 2. Section 3, provides definitions and has been amended by adding a definition of "particulate matter<sub>2.5</sub>", which is defined as particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers. The definitions of "person" and "standard conditions" have been deleted from the rule.

Sections 4 and 5 have been amended by altering the criteria and timing for measuring particulate matter to provide increased protection against particulate matter health effects. The size, frequency and data handling methods for tests of particulate matter have been modified. Section 5 also incorporates references to new tables provided for in the Code of Federal Regulations.

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### AUTHORITY

Statutory authority: W.Va. Code, **§22-5-4** provides:

(a) The director is authorized...

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee

relationship: Provided, however, That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof....

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ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.



VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.



FILED

JAN 15 9 37 AM '99

**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

*State Capitol - Room MB-49*  
*Charleston, West Virginia 25305*  
*Phone: (304) 347-4840*  
*Fax: (304) 347-4919*

*email: tanders@mail.wvnet.edu*

*Senator Mike Ross, Co-Chairman*  
*Delegate Mark Hunt, Co-Chairman*  
*Debra A. Graham, Counsel*

*Joseph A. Altizer, Associate Counsel*  
*Rita Pauley, Associate Counsel*  
*Teri Anderson, Administrative Assistant*

January 12, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: John H. Johnston  
Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter, 45CSR8**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed \_\_\_\_\_
  - (b) as modified by the agency       ✓
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_