

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FORM #6

Do Not Mark In This Box

FILED

JUN 1 2 33 PM '99

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.

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

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 08

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB2533

SECTION 64-3-1(f) , PASSED ON March 21, 1999

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: August 30, 1999



Authorized Signature

\$2.60



Executive Office
10 McJunkin Road
Nitro, West Virginia 25143-2506
Telephone: 304-759-0515
Fax: 304-759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

June 1, 1999

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 a "Final Rule" authorized by HB 2533, signed by Governor Underwood April 2, 1999.

Your cooperation in the regard is very much appreciated. If you should 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: Skipp Krop
Karen Watson
Carrie Chambers

**LEGISLATIVE HISTORY ABSTRACT
45CSR8**

**AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES AND
PARTICULATE MATTER**

Bureau of Environment
Division of Environmental Protection
Office of Air Quality
House Bill 2533 Section 64-3-1(f)

06/16/98 Filed Notice of Public Hearing with Secretary of State.

06/16/98 Initial Filing with Legislative Rule-Making Review Committee.

07/21/98 Held Public Hearing.

07/21/98 End of Public Comment Period.

07/31/98 Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.

01/12/99 Rule Approved by Legislative Rule-Making Review Committee with Modifications.

01/22/99 Modified Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.

03/21/99 Passed the West Virginia Legislature.

04/02/99 Approved by the Governor.

06/01/99 Rule Final Filed with Secretary of State.

08/30/99 Effective Date of Rule.

FILED

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

JUN 1 2 30 PM '99

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. -- 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. -- June 1, 1999.

1.4. Effective Date. -- August 30, 1999.

§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.

§45-8-3. Definitions.

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

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

3.3. "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.

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

3.6. "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.

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

4.1. The following 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 - 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.

4.1.b. Particulate Matter Primary and Secondary Standards

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).

§45-8-5. Methods of Measurement.

5.1. 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:

5.1.a. a reference method based on Appendix L 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. 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:

5.2.a. a reference method based on Appendix M 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. Sulfur dioxide concentrations shall be measured in the ambient air as sulfur dioxide by:

5.3.a. a reference method based on Appendix A 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.

§45-8-6. 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.

WEST

1 Bill-DEP,

H. B. 2521

2

(By Delegates Hunt, Linch, Compton, Faircloth,
Jenkins and Riggs)

3

4

[Introduced February 1, 1999; referred to the
Committee on the Judiciary.]

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9

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate a legislative rule relating
15 to ambient air quality standards for sulfur oxides and
16 particulate matter.

17 *Be it enacted by the Legislature of West Virginia:*

18 That section one, article three, chapter sixty-four of
19 the code of West Virginia, one thousand nine hundred
20 thirty-one, as amended, be amended and reenacted, to read
21 as follows:

22 **ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO**
23 **PROMULGATE LEGISLATIVE RULES.**

2521

1 §64-3-1. Division of environmental protection.

2 (a) The legislative rule filed in the state register
3 on the first day of August, one thousand nine hundred
4 ninety-seven, authorized under the authority of section
5 seven, article five, chapter twenty-two, of this code,
6 relating to the division of environmental protection (acid
7 rain provisions and permits, 45 CSR 33), is authorized.

8 (b) The legislative rule filed in the state register
9 on the first day of August, one thousand nine hundred
10 ninety-seven, authorized under the authority of section
11 seven, article five, chapter twenty-two of this code,
12 relating to the division of environmental protection
13 (emission standards for hazardous air pollutants pursuant
14 to 40 CFR Part 63, 45 CSR 34), is authorized.

15 (c) The legislative rule filed in the state register
16 on the first day of August, one thousand nine hundred
17 ninety-seven, authorized under the authority of section
18 six, article eighteen, chapter twenty-two of this code,
19 relating to the division of environmental protection
20 (hazardous waste management, 33 CSR 20), is authorized.

21 (d) The legislative rule filed in the state register
22 on the fourteenth day of August, one thousand nine hundred
23 ninety-seven, authorized under the authority of section

1 four, article five, chapter twenty-two, of this code,
2 relating to the division of environmental protection (to
3 prevent and control particulate air pollution from
4 manufacturing process operations, 45 CSR 7) is authorized.

5 (e) The legislative rule filed in the state register
6 on the first day of August, one thousand nine hundred
7 ninety-seven, authorized under the authority of section
8 four, article five, chapter twenty-two, of this code,
9 modified by the division of environmental protection to
10 meet the objections of the legislative rule-making review
11 committee and refiled in the state register on the seventh
12 day of January, one thousand nine hundred ninety-eight,
13 relating to the division of environmental protection (to
14 prevent and control of emissions from municipal solid waste
15 landfills, 45 CSR 23), is authorized.

16 (f) The legislative rule filed in the state register
17 on the first day of August, one thousand nine hundred
18 ninety-seven, authorized under the authority of section
19 seven, article one, chapter twenty-two of this code,
20 modified by the division of environmental protection to
21 meet the objections of the legislative rule-making review
22 committee and refiled in the state register on the second
23 day of December, one thousand nine hundred ninety-

1 seven, relating to the division of environmental protection
2 (to prevent and control air pollution from hazardous waste
3 treatment, storage or disposal facilities, 45 CSR 25), is
4 authorized.

5 (g) The legislative rule filed in the state register
6 on the first day of August, one thousand nine hundred
7 ninety-seven, authorized under the authority of section
8 three, article one, chapter twenty-two of this code,
9 modified by the division of environmental protection to
10 meet the objections of the legislative rule-making review
11 committee and refiled in the state register on the fifth
12 day of January, one thousand nine hundred ninety-eight,
13 relating to the division of environmental protection
14 (surface mining and reclamation regulations, 38 CSR 2), is
15 authorized.

16 (h) The legislative rule filed in the state register
17 on the thirty-first day of July, one thousand nine hundred
18 ninety-eight, authorized under the authority of section
19 four, article five, chapter twenty-two, of this code,
20 modified by the division of environmental protection to
21 meet the objections of the legislative rule-making review
22 committee and refiled in the state register on the twenty-
23 second day of January, one thousand nine hundred

1 ninety-nine, relating to the division of environmental
2 protection (ambient air quality standards for sulfur oxides
3 and particulate matter, 45 CSR 8), is authorized.

4

5 NOTE: The purpose of this bill is to authorize the
6 Division of Environmental Protection to promulgate a
7 legislative rule relating to Ambient Air Quality Standards
8 for Sulfur Oxides and Particulate Matter.

9

10 Strike-throughs indicate language that would be
11 stricken from the present law, and underscoring indicates
12 new language that would be added.