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West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

September 1, 1999

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

RE: 45CSR9 - "Rules Pertaining to Ambient Air Quality Standards for Carbon
Monoxide and Ozone"

Dear Ms. Cooper:

This letter will serve as approval for filing the above-referenced rule with your Office and the Legislative Rule-Making Review Committee 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 feel free to contact Carrie Chambers in my office at 759-0515.

Sincerely yours,

Michael C. Castle
Commissioner

MCC:cc

Attachment

cc: Skipp Kropp
Karen Watson
Carrie Chambers

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 45CSR9 - "Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone"

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 carbon monoxide and ozone, 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 (Act), EPA has reviewed the air quality criteria and national ambient air quality standards (NAAQS) for ozone (O₃) and particulate matter (PM). Based on these reviews, the EPA revised the standards for both classes of pollutants.

Ozone and related pollutants have long been recognized, in both clinical and epidemiological research, to affect public health. The revised standard would provide protection for children and other at-risk populations against a wide range of O₃-induced health effects, including decreased lung function (primarily in children active outdoors), increased respiratory symptoms (particularly in highly sensitive individuals), hospital admissions and emergency room visits for respiratory causes (among children and adults with pre-existing respiratory disease such as asthma), inflammation of the lung, and possible long-term damage to the lungs.

As explained above, EPA revised the national ambient air quality standards (NAAQS) for particulate matter (PM) and for ozone (O₃) (July 18, 1997 *Federal Register*) thereby necessitating the proposed revisions to the corresponding state counterpart rules

The 1999 Legislature, by the passage of House Bill No 2533, authorized the promulgation of the rule adopting the revised federal standards discussed above. This rule was filed by the Director June 1, 1999, and was made effective August 30, 1999. However, as a result of a federal court ruling on May 14, 1999, the federal standard for ozone was remanded to U.S. EPA. (See American Trucking Associations, Inc., et al v. United States Environmental Protection Agency, Case Nos. 97-1440 and 97-1441, United States Court of Appeals, District of Columbia Circuit, May 14, 1999)

To be consistent with this ruling, the rule being proposed by the Director suspends the ozone standard until further direction from either the U S EPA or the U.S. Supreme Court of Appeals.

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 as interpreted by the D.C. Circuit Court of Appeals, 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 Advisory Council has received a copy of the proposed rule and will have the opportunity to consult with the Director at the Council's meeting in September of 1999. The Council's recommendations and the Director's response to any recommendations will be included in the filing of an agency-approved rule with the Secretary of State and the Legislative Rule-Making Review Committee.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone"

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		
Estimated Total Cost	Increase	Decrease	Current	Next	There-after
	\$ 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 carbon monoxide and ozone to conform to those promulgated by the U.S. EPA under the federal Clean Air Act, as amended, and as interpreted by the U.S. Circuit Court of Appeals for the D.C. Circuit. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act.

Appendix B
Fiscal Note For Proposed Rules
Page Two

- 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: September 1, 1999

Signature of Agency Head or Authorized Representative

Garrie J. Chambers

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

SEP 1 2 40 PM '99

OFFICE OF AIR QUALITY
SECRETARY OF DEPARTMENT OF ENVIRONMENTAL AFFAIRS

SERIES 9
RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR
CARBON MONOXIDE AND OZONE

§45-9-1. General.

1.1 Scope. -- The purpose of this rule is to establish ambient air quality standards for carbon monoxide and ozone, 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.~~

1.5 Former Rules -- This legislative rule amends 45CSR9 - "Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone" which was filed on June 1, 1999 and became effective on August 30, 1999.

§45-9-2. 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.

§45-9-3. 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', shall have the meaning ascribed to it in W. Va. Code §22-5-2.

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

3.4. "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.

§45-9-4. Ambient Air Quality Standards.

4.1 The following ambient air pollutant concentrations shall not be exceeded:

4.1.a. Carbon Monoxide

4.1.a.1. Maximum eight (8) hour concentration, ten (10) milligrams per cubic meter (9 ppm) - not to be exceeded more than once per year.

4.1.a.2. Maximum one (1) hour concentration, forty (40) milligrams per cubic meter (35 ppm) - not to be exceeded more than once per year.

4.1.b. Ozone

4.1.b.1. The level of the 8-hour primary and secondary ambient air quality standards is 0.08 parts per million (ppm), daily maximum 8-hour average, attained 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 of 40 CFR Part 50.

4.1.b.2. Inasmuch as the federal ozone standard was remanded to the U.S. EPA (see *American Trucking Associations, Inc., et al. v. United States Environmental Protection Agency*, Case Nos. 97-1440 and 97-1441, United States Court of Appeals, District of Columbia Circuit, May 14, 1999), the provisions of paragraph 4.1.b.1. are suspended until the Director files notice with the Secretary of State that U.S. EPA or the United States Supreme Court of Appeals has reinstated substantively the same standard. In the event the U.S. EPA promulgates a different standard, the suspension will remain in effect until this rule is amended by the Director in accordance

with the rule-making procedures of W.Va. Code §29A-3-1 et seq.

§45-9-5. Methods of Measurement.

5.1 Carbon Monoxide concentrations shall be measured in the ambient air by

5.1.a. a reference method based on Appendix C 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. Ozone concentrations shall be measured in the ambient air by a reference method based on Appendix D of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53.