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10-23-99

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Executive Office  
#10 McJunkin Road  
Nitro, WV 25143-2506  
Telephone No: (304)759-0575  
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## West Virginia Bureau of Environment

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Cecil H. Underwood  
Governor

Michael C. Castle  
Commissioner

December 22, 1999

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

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

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your office as an agency-approved legislative rule.

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely,

Michael C. Castle  
Commissioner

MCC:cc

cc: Karen Watson  
Carrie Chambers

## Questionnaire

DATE: December 22, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection  
Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311-2599  
Phone: 304-558-4022

LEGISLATIVE RULE TITLE: 45CSR9 "Rules Pertaining to Ambient Air Quality Standards  
for Carbon Monoxide and Ozone"

1. Authorizing statute (s) citation: W.Va. Code §§22-5-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment  
Period:  
September 1, 1999

b. What other notice, including advertising, did you give of the hearing?

- I. Class I legal advertisement, Charleston Daily Mail and Charleston Gazette
- II. Sent a copy of the Public Notice to our agency mailing list
- III. DEP's "Public Notice Bulletin" and DEP's "In Depth" (September issues)
- IV. Public Notice placed on agency's website

c. Date of Public Hearing (s) or Public Comment Period ended:  
October 12, 1999

- Attached   X                        No comments received

- December 22, 1999

- Edward L. Kropp, Chief  
1558 Washington Street, East  
Charleston, West Virginia 25311-2599
- Phone: 304-558-4022  
Fax: 304-558-3287  
E-Mail: [skropp@mail.dep.state.wv.us](mailto:skropp@mail.dep.state.wv.us)

- See "f" above

- 2

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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- b. Date of hearing or comment period:

N/A

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- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

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- d. Attach findings and determinations and reasons:

Attached N/A

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**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 (O<sub>3</sub>) 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 O<sub>3</sub>-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.

## Briefing Document

### Page 2

As explained above, EPA revised the national ambient air quality standards (NAAQS) for particulate matter (PM) and for ozone (O<sub>3</sub>) (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:**

At a meeting September 9, 1999, the Advisory Council reviewed and discussed this rule; there were no substantive changes as a result of the Council's meeting. (See attached minutes of that meeting.)

## **APPROVED MINUTES**

### **ENVIRONMENTAL PROTECTION ADVISORY COUNCIL**

**September 9, 1999, Director's Conference Room, Nitro**

The seventeenth meeting of the DEP Advisory Council was held Thursday, September 9, 1999, in the Director's Conference Room located in Nitro, Chairman Michael Castle called the meeting to order at 2:00 p.m.

Attending:

#### **Advisory Council Members:**

Michael Castle, Chairman  
Jacqueline Hallinan  
William Raney  
William Samples

#### **Environmental Protection:**

Tony Grbac  
Randy Huffman  
Skipp Kropp  
Pam Nixon  
Terry Polan  
Cap Smith  
Barbara Taylor  
Karen Watson

- 1) Chairman Castle introduced himself and made opening remarks.
- 2) Review and Approval of June 10, 1999 Minutes. Chairman Castle called the meeting to order at 2:00 p.m. The first order of business was approval of the minutes of the June 10, 1999, Advisory Council meeting: they were approved as written.
- 3) Update on Status of Blasting Rule by Randy Huffman. Deputy Director Huffman reiterated that the Blasting Rule was developed as a result of Senate Bill 681. The Blasting Rule was originally filed in June; however due to complaints by citizens/industry regarding their lack of involvement in the development of the rule, a stakeholders group was formed. This group met weekly to review the rule and to make any agreed upon changes by the end of July. The results of the meetings are available on the DEP website - Blasting Stakeholders. A number of consensus recommendations to the rule were developed into a 2-page summary. The revised rule was filed in August.



4) Discussion of Proposed Rules by Karen Watson

45CSR8 - AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES AND PARTICULATE MATTER. 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. The rule being proposed by the Director suspends the PM 2.5 standard until further direction from either the U.S. EPA or the U.S. Supreme Court of Appeals. The proposed rule retains the standard for PM10 since solid basis for the Court vacating the PM10 standard was that the PM2.5 and the PM10 standards could not co-exist without there being essentially double regulation.

45CSR9 - RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE AND OZONE. 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. To be consistent with this ruling, the rule being proposed by the Director suspends the ozone standard until further direction from either U.S. EPA or the Supreme Court of Appeals.

45CSR24 - TO PREVENT AND CONTROL EMISSIONS FROM HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS. This rule establishes emission limits and performance standards for new and existing hospital/medical/infectious waste incinerators (HMIWI). The pollutants regulated by this rule include metals (cadmium, lead, and mercury); particulate matter; acid gases (sulfur dioxide and nitrogen oxides, and hydrogen chloride); organic compounds (dioxins and furans); carbon monoxide; and opacity. This rule also established requirements for HMIWI operator training/qualification, waste management plans, and testing/monitoring of pollutants and operating parameters. The purpose of revising the rule is to correct typographic errors and to maintain consistency with the federal rule.

5) Discussion of Proposed Rule by Terry Polan.

45CSR13 - PERMITS FOR CONSTRUCTION, MODIFICATION, RELOCATION AND OPERATION OF STATIONARY SOURCES OF AIR POLLUTANTS, NOTIFICATION REQUIREMENTS, ADMINISTRATIVE UPDATES, TEMPORARY PERMITS, GENERAL PERMITS, AND PROCEDURES FOR EVALUATION - The purpose of this rule is to set forth the procedures for stationary source reporting, and the criteria for obtaining a permit to construct and operate a new stationary source which is not a major stationary source, to modify a non-major stationary source, to make modifications which are not major modifications to an existing major stationary source, and to relocate non-major stationary sources within the State of West Virginia. Such construction, modification or relocation without a required permit is a violation of this rule. This rule also establishes the requirements for obtaining an administrative update to an existing permit, temporary permit or a general permit, and for filing notifications of changes not otherwise subject to the permit requirements of this rule. The rule

establishes public participation requirements as well as procedures for the transfer, suspension and revocation of permits.

6) Discussion by Cap Smith regarding Tire Piles. Cap Smith, Chief of the Office of Waste Management, discussed the problems and solutions currently being utilized regarding existing tire piles and the handling of the 2 million tires being produced each year. The EPA wants to be involved in the solution; however, they have no funding sources available to dedicate to the problem. Legislation will again be proposed. Mr. Smith also commented on the serious ongoing tire fire in Toledo, Ohio and distributed an article regarding this hazard (copy attached).

7) Discussion and Update by Barbara Taylor regarding TMDL Stakeholders. Barbara Taylor, Chief, Office of Water Resources, provided a detailed update on the status of the efforts of the TMDL Stakeholders group and provided explanatory handouts/graphics (copies attached). The TMDL Stakeholders group is focusing on going forward and making improvements.

8) Status update by Skipp Kropp on Regional Haze order. Skipp Kropp reported that EPA has promulgated a Regional Haze rule. The rule assumes that the EPA NOx SIP Call for ozone transport and the new 8-hour ozone standard are in place. Inasmuch as the new ozone standard has been remanded to EPA in an appeal in which WV DEP participated, and the NOx SIP Call is being litigated, so far successfully, by WV DEP and other parties, Mr. Kropp advised that OAQ had also joined Michigan and several other parties in appealing the haze rule as well.

Chairman Castle thanked everyone for attending. The meeting was adjourned at 4:30 p.m.

## 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: 12/22/99

Signature of Agency Head or Authorized Representative

Farrie J. Chambers

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

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 (O<sub>3</sub>), 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.

**ORIGINAL**

BEFORE THE WEST VIRGINIA DIVISION OF  
ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 9 " Rules Pertaining to Ambient Air Quality  
Standards for Carbon Monoxide and Ozone."

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Water Resources', Conference Room, 1201 Greenbrier Street, East, Charleston, West Virginia, 25305, commencing at 6:04 p.m., on the 12th day of October, 1999, pursuant to notice.

Missy L. Young, C.C.R.  
Post Office Box 13221  
Sissonville, WV 25360  
(304) 984-2300 or 540-8179

1                   P R O C E E D I N G S

2                   MS. CHANDLER:   This public hearing will  
3                   now come to order on this 12th day of October, 1999 at the  
4                   West Virginia Division of Environmental Protection, Office  
5                   of Water Resources' conference room located at 1201  
6                   Greenbrier Street, Charleston, West Virginia.

7                   The purpose of the public hearing is to  
8                   receive comments on the proposed rules filed in the  
9                   Secretary of State's Office on September 1st and September  
10                  8, 1999 and noticed in the State Register on September 3rd  
11                  and September 10, 1999.   The proposed legislative rules  
12                  are 45CSR8, 45CSR9, 45CSR13, and 45SCR24.   The rules were  
13                  noticed in a Class I legal advertisement in both the  
14                  Charleston Daily Mail and Charleston Gazette, and notice  
15                  was also sent to various individuals and organizations.

16                  This public hearing is being held pursuant  
17                  to the provisions of 29A of the West Virginia Code and  
18                  Section 110 of the Clean Air Act.

19                  My name is Jeanne Chandler of the Public  
20                  Information Office of the West Virginia Division of  
21                  Environmental Protection.   I will be the moderator for  
22                  these proceedings this evening.

23                  In order to obtain separate transcripts  
24                  for each of the rules, the hearing procedure this evening



1 will be to introduce each rule individually, allow time  
2 for oral comments and close the hearing for that  
3 particular rule. Written comments for any rule may be  
4 submitted at the end of this public hearing tonight. For  
5 those of you wishing to make oral comments, a sign-up  
6 sheet is in the back and please, sign up now, before I  
7 take it up. Please limit your comments to five minutes.  
8 Your comments will be made a part of the rulemaking  
9 record.

10 The court reporter is Ms. Missy L. Young,  
11 if anyone desires a transcript of this proceeding, please  
12 contact Ms. Young at 984-2300.

13 45CSR9 - "Rules Pertaining to Ambient Air  
14 Quality Standards for Carbon Monoxide and Ozone".

15 The purpose of this rule establishes  
16 ambient air quality standards for carbon monoxide and  
17 ozone, equivalent to those national primary and secondary  
18 ambient air quality standards established by the U.S.  
19 Environmental Protection Agency.

20 National primary ambient air quality  
21 standards define levels of air quality which the  
22 Administrator of the U.S. EPA judges are necessary, with  
23 an adequate margin of safety, to protect the public  
24 health. National secondary ambient air quality standards

1 define levels of air quality which the Administrator of  
2 the U. S. EPA judges necessary to protect the public  
3 welfare from any known or anticipated adverse effects of a  
4 pollutant. Such standards are subject to revision, and  
5 additional primary and secondary standards may be  
6 promulgated as the Administrator of the U.S. EPA deems  
7 necessary to protect the public health and welfare.

8 In accordance with sections 108 and 109 of  
9 the Clean Air Act (ACT), EPA has reviewed the air quality  
10 criteria and national ambient air quality standards  
11 (NAAQS) for ozone (O<sub>3</sub>) and particulate matter (PM). Based  
12 on these reviews, the EPA revised the standards for both  
13 classes of pollutant (July 18, 1997 Federal Register)  
14 thereby necessitating the proposed revisions to the  
15 corresponding state counterpart rules.

16 The 1999 Legislature, by the passage of  
17 House Bill No. 2533, authorized the promulgation of the  
18 rule adopting the revised federal standards discussed  
19 above. This rule was filed by the Director June 1, 1999,  
20 and was made effective August 30, 1999. However, as a  
21 result of the federal court ruling on May 14, 1999, the  
22 federal standard for ozone was remanded to U.S. EPA.

23 To be consistent with this ruling, the  
24 rule being proposed by the Director suspends the ozone

1 standard until further direction from either the U.S. EPA  
2 or the U.S. Supreme Court of Appeals.

3 The floor is now open for public comment.

4 MS. POOLE: I'm Denise Poole of the Ohio  
5 Valley Environmental Coalition. I just want to say that  
6 this particular issue here, concerning the ozone standards  
7 is a quite a serious one. We are living here in the  
8 Ohio River valley, in a very polluted area and we subject  
9 to it and it's a mess. OVEC is currently under going a  
10 study, actually, we are just completing, it does directly  
11 correlating the health effect to ground level ozone add  
12 it's sources, which we live and breath everyday. It is  
13 also part of the suit from New York State, pursuing these  
14 particular plants. Seven of which, are in this area of  
15 Ohio. OVEC is considering joining that suit. I urge our  
16 Office of Air Quality to do what ever they can to support  
17 higher standards, in this regard. We are living in  
18 horrible conditions here.

19 MS. CHANDLER: Thank you, Ms. Poole.  
20 Would anyone else like to comment on 45CSR9? Mr.  
21 Flannery?

22 MR. FLANNERY: Thank you, Ms. Chandler.  
23 My name is Dave Flannery, I chair the Environmental  
24 Committee of the West Virginia Chamber of Commerce and I

1 am pleased to address the proposed change to this  
2 regulation to the ozone may met air quality standard.

3 The standard that is at issue here is a  
4 national standard that, as you pointed out, has been  
5 invalidated by the United State Court of Appeals of the  
6 District of Columbia Circuit on grounds that indicated  
7 that the standard was so poorly conceived that the agency  
8 couldn't articulate why it had picked 80 parts per million  
9 as opposed to 70 or 90 or 60 or 100. And literally we are  
10 concerned that the agency, the federal agency, when it  
11 adopted this standard, is a predicate for West Virginia's  
12 action, simply pulled a number out of the air.

13 We too, favor taking action that is  
14 protective of human health and the environment, but to do  
15 so through actions such as the action that was taken here  
16 by the federal government to adopt a number, which the  
17 courts now determine to be unconstitutional, because they  
18 were arbitrary under nature, is not the way to do that.

19 We support the proposal to suspend this  
20 standard and urge the agency to advance it.

21 MS. CHANDLER: Thank you, Mr. Flannery.  
22 would anyone else like to comment? There being nothing  
23 further, the public hearing on 45CSR9 is now concluded.

24 (WHEREUPON, the public hearing was concluded.)

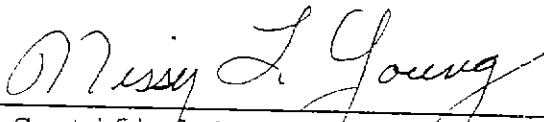
BEFORE THE WEST VIRGINIA DIVISION OF  
ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a  
Certified Court Reporter and Commissioner within and for  
the State of West Virginia, duly commissioned and  
qualified, do hereby certify that the foregoing is, to the  
best of my skill and ability, a true and accurate  
transcript of all the proceedings had in the  
aforementioned matter.

Given under my hand and official seal this  
15th day of October 1999.

  
\_\_\_\_\_  
Certified Court Reporter  
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

# Division of Environmental Protection

Public Hearing: DAO Trucks 45CSR8, 45CSR9, 45CSR13 & 45CSR24

Time/Date: Oct 12, 1999 6:00 pm

| NAME                            | ADDRESS                                      | COMMENT<br>YES NO                   |
|---------------------------------|--|-------------------------------------|
| 1. Jack L Morstad               | 400 South Charleston Plant                   | <input checked="" type="checkbox"/> |
| 2. Tina Eileen Cifarese         | 1010 Valley Ave (Par. lot 25302)             | <input checked="" type="checkbox"/> |
| 3. Jennifer S. Holmes           | <del>257</del> 302 Woodbridge Ln. Has. 25311 | <input checked="" type="checkbox"/> |
| 4. Larry Bruce Pland            | 1425 Quamina St #5 Char 25301-2009           | <input checked="" type="checkbox"/> |
| 5. <del>Jeffrey St. James</del> |  |                                     |
| 6. Tim MacIver                  | 1420 W 313 W & ST E Charleston               | <input checked="" type="checkbox"/> |
| 7. Darrell Bellier              | GE Plastics PO Box 68 Washington rd 26181    | <input checked="" type="checkbox"/> |
| 8. Jan Kiron                    | 44-DEF #10 McIntosh Rd, Wiro                 |                                     |
| 9. Jeri Hunt                    | 412 3rd St. #201 Char W 25304                | <input checked="" type="checkbox"/> |
| 10. Peter Hax                   | " "  |                                     |
| 11. Tolly Browner               | DEP-OMG                                      |                                     |
| 12. Rick Wilson                 | NSES Consultants, PO 170, Clarkburg WV 26302 | <input checked="" type="checkbox"/> |
| 13. Debbie Kendall              | Steel Chemical 34014 & Apple Grove W 25302   | <input checked="" type="checkbox"/> |
| 14. Perry Bryant                | 1544 2nd St Charleston W 25311               | <input checked="" type="checkbox"/> |
| 15. Denise Roale                | 103 Oakland Ave - Huntington W 25705         | <input checked="" type="checkbox"/> |



Karen — Karen —

# WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311

Telephone: (304) 342-2123

FAX: (304) 342-4552

wvma@wvma.com

OFFICE OF AIR QUALITY

PM OCT 12 P 4:01

10/12/99

October 12, 1999

Mr. Edward L. Kropp, Chief  
WV Division of Environmental Protection  
Office of Air Quality  
1558 Washington Street, East  
Charleston, West Virginia 25311-2599

Re: 45 CSR 8, "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"; and 45 CSR 9, "Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone".

Dear Chief Kropp:

These comments in support of the proposed amendments to the two above-listed rules are submitted on behalf of the West Virginia Manufacturers Association Air Team. The WVMA, with over 200 member companies, forms the core of the industrial and manufacturing community of West Virginia. As such, we take a vital interest in the regulations governing air quality in West Virginia.

As to Regulation 8, we support the Office of Air Quality's action to suspend the  $PM_{2.5}$  standard until issues related to that standard are resolved by EPA or the US Supreme Court of Appeals subsequent to the May 14, 1999 ruling of the United States Court of Appeals for the District of Columbia Circuit in American Trucking Association, Inc., et al. v. United States Environmental Protection Agency (Case Nos. 97-1440 and 97-1441). Because the Court remanded the  $PM_{2.5}$  standard it makes no sense to have that standard independently enforceable in West Virginia or any other state until those issues are resolved. However, we do support the OAQ's action in retaining the  $PM_{10}$  standard since it would then not be inconsistent with the suspended  $PM_{2.5}$  standard. Furthermore, retention of this  $PM_{10}$  standard will provide ongoing regulation of fine particulates while revisions to the standard are being addressed by EPA and the courts.

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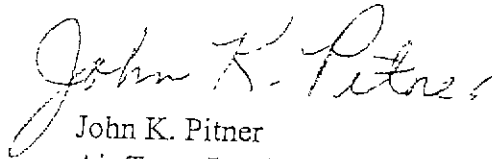
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W.M. Cramer Lumber Co.  
Weirton Steel Corporation

Mr. Edward L. Kropp, Chief  
October 12, 1999  
Page 2

As to Regulation 9, dealing with standards for carbon monoxide and ozone, we also support the action of the Director to suspend the 8-hour ozone standard until further direction from either the EPA or the US Supreme Court of Appeals. The 8-hour ozone standard was also remanded to EPA and declared to be unenforceable by the United States Court of Appeals for the District of Columbia Circuit on May 14, 1999 in the ATA decision referenced above. Accordingly, it would be inconsistent with state policy and law to enforce a standard in West Virginia that is not enforceable on the federal level. We therefore support the action of the OAQ to suspend this standard while these issues are resolved on the federal level. We note that precursor pollutants will continue to be controlled by the OAQ under independent regulations regarding volatile organic compounds and nitrogen oxides. Therefore, this suspension of the 8-hour ozone standard will not result in a lack of appropriate control of those pollutants.

We appreciate this opportunity to express our support for the proposed actions of the Director and the Office of Air Quality.

Sincerely,



John K. Pitner  
Air Team Leader  
West Virginia Manufacturers Association

JKP/kbp/lmw

cc: WVMA Air Team Members  
Karen S. Price, President, WVMA





# WEST VIRGINIA REGISTER

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## LEGISLATIVE

## WEST VIRGINIA

## SECRETARY OF STATE

MEMORANDUM

## ADMINISTRATIVE LAW DIVISION

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10/17/99

FORM #1

## 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 Dioxide

and Particulate Matter"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: October 12, 1999 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Water Quality - Conference Room

1201 Greenbrier Street

Charleston, West Virginia 25311

COMMENTS LIMITED TO ORAL ☐ WRITTEN ☒ BOTH ☐

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Edward L. Krump, 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 of Air Quality

1338 Washington Street East

Charleston, WV 25311-2379

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

Edward L. Krump  
Authorized Signature

## LEGISLATIVE

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10/17/99

FORM #1

## 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: 9

TITLE OF RULE BEING AMENDED: "Rules Pertaining to Ambient Air Quality Standards

for Carbon Monoxide and Ozone"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: October 12, 1999 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Water Quality - Conference Room

1201 Greenbrier Street

Charleston, West Virginia 25311

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Edward L. Krump  
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State of West Virginia.

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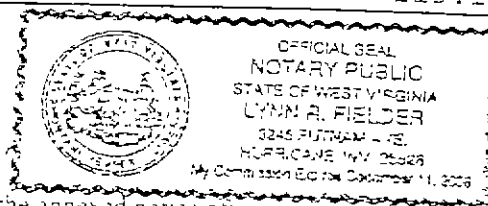
published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of

PUBLIC HEARING

was duly published in said paper(s) during the dates listed below and was posted at the front door of the court house of said Kanawha County, West Virginia, on the 6TH day of SEPTEMBER 1999. Published during the following dates 09/04/99 - 09/04/99

Subscribed and sworn to before me this 8 day of September

Printers fee \$ 115.10



Notary Public of Kanawha County, West Virginia

SEP 10 2000  
19-18-21 A-1-51

NOTICE OF  
PUBLIC HEARING AND  
PUBLIC COMMENT  
PERIOD

On Tuesday, October 12, 1999 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on proposed revisions to the following legislative rules.

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

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

45CSR13 "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation"

45CSR24 "To Prevent and Control Emissions from Hospital/ Medical/ Infectious Waste Incinerators"

Upon authorization and promulgation of revisions to 45CSR8, 45CSR9 and 45CSR13, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR24, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State's Plan for Hospital/ Medical/ Infectious Waste Incinerators, pursuant to Section 11(d) of the Federal Clean Air Act, and also included in the State's request for delegation of authority to implement and enforce 40 CFR Part 60 Subpart E.

The hearing will be held at the Division of Environmental Protection, Office of Water Quality - Conference Room, 1201

and is open to the public. Written and oral comments will be accepted until the close of the hearing on October 12th and will be made a part of the rulemaking record. Comments will not be accepted by e-mail. The public may submit written comments by mail, facsimile (204-338-3287) or other delivery to the Office of Air Quality through October 12th for inclusion in the rulemaking record at the following address:

Edward K. Kropp,  
Chief  
Office of Air Quality  
1538 Washington St., E.  
Charleston, WV 25311-2599

Comments submitted by mail must be postmarked by October 12, 1999. Copies of the proposed legislative rules for 45CSR8, 45CSR9, and 45CSR24 will be available for public review on or before September 3, 1999 at the Office of Air Quality's Charleston office at the above address. Copies of the proposed legislative rule for 45CSR13 will be available for public review on or before September 8, 1999 at the same address.

## 45CSR9

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

#### RESPONSE TO COMMENTS

On October 12, 1999, the Division of Environmental Protection (DEP), Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR9 – “Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone.” The OAQ received one written comment from the West Virginia Manufacturer’s Association (WVMA). Also, two persons presented oral comments at the public hearing -- Ms. Denise Poole for the Ohio Valley Environmental Coalition (OVEC) and Mr. David Flannery for the West Virginia Chamber of Commerce.

#### **I. Commenter: West Virginia Manufacturer’s Association (WVMA)**

**COMMENT A.** *The commenter supports the proposed rule which suspends the 8-hour ozone standard until further direction from U.S. EPA or the U.S. Supreme Court of Appeals and further notes that precursor pollutants will continue to be controlled by the OAQ.*

**RESPONSE A.** No response required.

#### **II. Commenter: Ohio Valley Environmental Coalition (OVEC)**

**COMMENT A.** *The commenter stated that the issue of ozone standards is a serious one and said that OVEC is currently conducting a study on the health effects of ground-level ozone. The commenter urged the OAQ to support higher standards.*

**RESPONSE A.** OAQ responds that its actions in proposing revisions to this rule are intended to make the state’s ozone standard comport with the federal standard, since OAQ considers U.S. EPA to be the lead agency in establishing ambient air quality standards.

#### **III. Commenter: West Virginia Chamber of Commerce**

**COMMENT A:** *The commenter pointed out that the standard at issue is a federal standard that has been invalidated by the D.C. Circuit Court of Appeals and further stated its support of the proposed revisions to the rule.*

**RESPONSE A:** No response required.