

## Form #3

SECRETARY OF STATE

Stephanie R. Timmermeijer  
Authorized Signature

44.60

## QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: December 18, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Department of Environmental Protection  
Division of Air Quality  
601 57th Street, S.E.  
  
Charleston, West Virginia 25304  
Phone: 304-926-0499 ext. 1237

LEGISLATIVE RULE TITLE: Repeal -- 45CSR12 - Ambient Air Quality Standards for Nitrogen Dioxide

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:
- November 16, 2007
- b. What other notice, including advertising, did you give of the hearing?
- Posted on the Department of Environmental Protection's web site under "Calendar of Events".
- Also posted on the Division of Air Quality's web site under "Public Notice and Comment".
- Notice also sent to those on the Department's Press Release and Public Notice Mailing Lists.
- c. Date of Public Hearing(s) *or* Public Comment Period ended:
- December 17, 2007
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
- Attached \_\_\_\_\_ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

December 19, 2007

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John A. Benedict, Director  
601 57th Street, S.E.  
Charleston, WV 25304

Tamra Mowrer, Administrative Secretary  
601 57th Street, S.E.  
Charleston, WV 25304

Phone: 304 926-0499  
Fax: 304 926-0488  
e-mail: jbenedict@wvdep.org

Phone: 304 926-0499  
Fax: 304 926-0488  
e-mail: tmowrer@wvdep.org

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

James Mason, Technical Analyst III  
601 57th Street, S.E.  
Charleston, WV 25304

Phone: 304 926-0499 ext. 1200  
Fax: 304 926-0479

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- 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

b. Date of hearing or comment period:

\_\_\_\_\_ N/A \_\_\_\_\_

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

\_\_\_\_\_ N/A \_\_\_\_\_

d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_ N/A \_\_\_\_\_

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR QUALITY**

**BRIEFING DOCUMENT**

**Rule Title:** 45CSR12 - "Ambient Air Quality Standard For Nitrogen Dioxide"

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

**B. SUMMARY OF RULE:**

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR12 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

The substantive provisions of 45CSR12 have been updated and included in the provisions of the agency-approved rule 45CSR8, previously filed with the Secretary of State on July 26, 2007, and proposed for authorization by the 2008 Legislature.

## APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**Rule Title: 45CSR12 - "Ambient Air Quality Standard For Nitrogen Dioxide"Type of Rule:   X   Legislative        Interpretive        ProceduralAgency: Division of Air QualityAddress: 601 57<sup>th</sup> Street SE  
Charleston, WV 25304Phone Number: 926-0475Email: tmowrer@wvdep.org**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR12 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public.

The substantive provisions of 45CSR12 have been updated and included in the provisions of the agency-approved rule 45CSR8, previously filed with the Secretary of State on July 26, 2007, and proposed for authorization by the 2008 Legislature. The proposed repeal of this rule should cause no additional impact on costs and revenues of state government.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

**FISCAL YEAR**

Effect of Proposal	2008 Increase/Decrease (use "-")	2009 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

Rule Title: 45CSR12 - "Ambient Air Quality Standard For Nitrogen Dioxide"

3. **Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The proposed repeal of this rule will have no effect on the costs to the Division of Air Quality. Refer to above explanation.

## MEMORANDUM


Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR12 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public.

The substantive provisions of 45CSR12 have been updated and included in the provisions of the agency-approved rule 45CSR8, previously filed with the Secretary of State on July 26, 2007, and proposed for authorization by the 2008 Legislature. The proposed repeal of this rule should cause no additional impact on costs and revenues of state government.

Date: November 14, 2007

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
John A. Benedict, Director

FILED

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

2007 DEC 19 PM 2:40

OFFICE OF THE ATTORNEY GENERAL  
SECRETARY OF STATE

SERIES 12  
AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE

**§45-12-1. General:**

~~1.1. Scope. -- The purpose of this rule is to establish ambient air quality standards for nitrogen dioxide 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. -- May 19, 2000.~~

~~1.4. Effective Date. -- June 1, 2000.~~

~~1.5. Former Rules. -- This legislative rule amends 45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed February 2, 1972, and which became effective March 15, 1972.~~

**§45-12-2. 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.~~

**§45-12-3. 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. "Ambient Air Quality Standard" 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.~~



**~~§45-12-4. Ambient Air Quality Standard:~~**

~~4.1. The following ambient air quality standard shall not be exceeded:~~

~~—— Nitrogen Dioxide~~

~~—— Annual Arithmetic Mean — 100  
micrograms per cubic meter (0.053 parts per  
million)~~

**~~§45-12-5. Methods of Measurement:~~**

~~5.1. Nitrogen dioxide concentrations shall be  
measured in the ambient air by:~~

~~5.1.a. a reference method based on  
Appendix F 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.~~

**Public Hearing - December 17, 2007 at 6PM**  
**Public hearing on the repeal of 45CSR9 - 45CSR12 - 45CSR15 - 45CSR24**  
**Held at DEP Headquarters Kanawha City, WV**

**Jim Mason:** Good evening, my name is Jim Mason it's December 17<sup>th</sup> 6:20 p. m. public hearing. Public hearing number one. The purpose of this public hearing is to accept comments on the proposed repeal of 45CSR9 - *Ambient Air Quality Standards for Carbon Monoxide and Ozone*. The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR9 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public. The substantive provisions of 45CSR9 have been updated and included in the provisions of the agency-approved rule 45CSR8, previously filed with the Secretary of State on July 26, 2007, and proposed for authorization by the 2008 Legislature. The floor is now open for comments. Please state your name and any affiliation. There being nothing further, this public hearing for the proposed repeal of 45CSR9 is concluded.

**Jim Mason:** The purpose of this public hearing is to accept comments on the proposed repeal of 45CSR12 - *Ambient Air Quality Standard for Nitrogen Dioxide*. The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR12 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public. The substantive provisions of 45CSR12 have been updated and included in the provisions of the agency-approved rule 45CSR8, previously filed with the Secretary of State on July 26, 2007, and proposed for authorization by the 2008 Legislature. The floor is now open for comments. Please state your name and any affiliation. There being nothing further, this public hearing for the proposed repeal of 45CSR12 is concluded.

**Jim Mason:** The purpose of this public hearing is to accept comments on the proposed repeal of 45CSR15 - *Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61*. The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR15 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated

community and the general public. The substantive provisions of 45CSR15 have been updated and included in the provisions of the agency-approved rule 45CSR34, previously filed with the Secretary of State on July 25, 2007, and proposed for authorization by the 2008 Legislature. The floor is now open for comments. Please state your name and any affiliation. There being nothing further, this public hearing for the proposed repeal of 45CSR15 is concluded.

**Jim Mason:** The purpose of this public hearing is to accept comments on the proposed repeal of 45CSR24 - *To Prevent and Control Emissions from Hospital/ Medical/ Infectious Waste Incinerators*. The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR24 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public. The substantive provisions of 45CSR24 have been updated and included in the provisions of the agency-approved rule 45CSR18, previously filed with the Secretary of State on July 26, 2007, and proposed for authorization by the 2008 Legislature. The floor is now open for comments. Please state your name and any affiliation. There being nothing further, this public hearing for the proposed repeal of 45CSR24 is concluded.

**DEP Personnel present at meeting:**

**Public Information:** Richard Carter

**Environmental Advocate:** Pam Nixon

**DAQ Planning/Program Development:** Jim Mason

*I submit this transcript and swear that it is true and accurate copy, to the best of my ability, of the public hearing held on Monday, December 17, 2007 for the repeal of 45CSR9 - 45CSR12 - 45CSR15 - 45CSR24.*

*Rich Carter, Public Information Specialist III, DEP Public Information Office  
18 December 2007*

**December 17, 2007 at 6PM**

Public hearing on the repeal of 45CSR9 - 45CSR12 - 45CSR15 - 45CSR24.

[illegible]

## **45CSR12**

### **AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE**

#### **RESPONSE TO COMMENTS**

On November 16, 2007, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on December 17, 2007 to accept oral comments on the proposed repeal of legislative rule 45CSR12. Written comments were also accepted through 6:00 PM on Monday, December 17, 2007. No commenter submitted written comments regarding the proposed repeal of rule 45CSR12, and no commenter provided verbal comments.