

\$7.20

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

**BRIEFING DOCUMENT**

**Rule Title:** 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"

**A. AUTHORITY:** W.Va. Code §22-5-4

**B. SUMMARY OF RULE:**

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to 40 CFR Part 61 and section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporates by reference the NESHAP standards of 40 CFR Parts 61 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Part 61, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 61 must comply with the applicable NESHAPS and this rule.

45CSR15, in conjunction with 45CSR34, establishes general provisions for emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by USEPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by USEPA under 40 CFR Part 63 whereas 45CSR15, incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Emission Standards for Hazardous Air Pollutants for Asbestos.

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

As set forth in 40 CFR §61.04(b), Section 112(d) of the CAA directs the U.S. EPA Administrator to delegate to each State the authority to implement and enforce national

emission standards for hazardous air pollutants for stationary sources. Promulgation of this rule will enable the Department of Environmental Protection, Division of Air Quality (DAQ) to continue to be the primary enforcement authority for NESHAP promulgated under 40 CFR Part 61 by U.S. EPA as of June 1, 2005. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the CAA, as amended. Revisions to the rule include annual incorporation by reference updates and general language clarification.

**D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:**

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division of Air Quality proposes that the rule incorporate by reference the federal counterparts. Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with W.Va. Code §§22-1A-1 and 3(c), the Secretary 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 its June 8, 2005 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

**ADVISORY COUNCIL MEETING MINUTES**

Wednesday - June 8, 2005

601 57<sup>th</sup> Street, SE, Charleston, WV

Dolly Sods Conference Room – 1st Floor

**ATTENDEES:**

**Advisory Council Members:**

Larry Harris

Jackie Hallinan

Rick Roberts

Lisa Dooley

Bill Raney

Karen Price

**DEP:**

Stephanie R. Timmermeyer, Cabinet Secretary

Karen G. Watson, Assistant General Counsel

Ken Ellison, Director - Division of Land Restoration

Lisa McClung, Director – Division of Water and Waste Management

John Benedict, Director – Division of Air Quality

Mike Zeto, WVDEP

Charlie Sturey, WVDEP

Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office

James Martin, Chief, WVDEP - Office of Oil & Gas

Brett Loflin, WV Oil and Gas Conservation Commission

Dave Bassage- WVDEP

Greg Adolpson – WVDEP

Jim Mason – WVDEP

Fred Durham – WVDEP

Jim Mason – WVDEP

Mike Johnson – WVDEP

**VISITORS:**

Linda Tennant, Spilman, Thomas, Battle

Don Garvin – WVEC

Bob Asplund - Dominion

Karen Watson, WVDEP – Assistant General Counsel, called the meeting to order at 10:00 a.m.

Proposed rules for the 2006 legislative session are as follows:

- **45CSR1 “Control and Reduction of Nitrogen Oxides from Non-Electric Generating Units as a Means to Mitigate Transport of Ozone Precursors”**

This rule partially fulfills the State's obligations in response to U.S. EPA's final rule, *Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group region for Purposes of Reducing Regional Transport of Ozone* 27 Oct 1998, herein referred to as the *NO<sub>x</sub> SIP Call*). Essentially, the federal rule requires that large emitters of Nitrogen Oxides (NO<sub>x</sub>) significantly reduce emissions and constrains them to set budgets, starting in 2004 and maintaining them thereafter. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy/sell NO<sub>x</sub> emission allowances from /to other program participants. For example, a source which has emitted NO<sub>x</sub> in excess of its NO<sub>x</sub> allowance allocation may purchase NO<sub>x</sub> allowances under the federal NO<sub>x</sub> Budget Trading Program to obtain the needed NO<sub>x</sub> emission allowances to cover its actual NO<sub>x</sub> emissions during an ozone season. Conversely, a source which emits fewer tons of NO<sub>x</sub> than its NO<sub>x</sub> allowance allocation may either bank or sell (trade) the excess NO<sub>x</sub> allowances to another sources which needs them to cover its excess NO<sub>x</sub> emissions.

45CSR1 applies to large fossil fuel-fired stationary sources (large industrial boilers) with heat inputs greater than 250 mmBtu/hr. The Department of Environmental Protection, Division of Air Quality (DAQ) addresses Electric Generation Units (EGUs) in a separate rulemaking, 45CSR26. 45CSR1 also applies to large cement kilns and internal combustion engines which emitted more than one ton per day of NO<sub>x</sub> from May 1 through September 30, 1995, although these sources are not subject to the NO<sub>x</sub> Budget Trading Program.

#### **Comments:**

How will this relate to the new rule 40?

*Rule 40 will repeal Rule 1 in 2009.*

Are these kinds of trading effective in lowering NO<sub>x</sub> emission?

*Yes, West Virginia has dropped from one of the highest to one of the lowest states.*

If one is testing, how do you see which sources account for improvement?

*Have CEMS on stacks so we can analyze data.*

- **45CSR15 – “Emission Standards for Hazardous Air Pollutants Pursuant to 40CFR Part 61”**

This rule establishes and adopts national emission standards for hazardous air pollutant (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to 40CFR part 61 and section 112 of the federal clean Air Act, as amended (CAA). This rule codifies general procedures and

criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more to the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporated by reference the NESHAP standards of 40 CFR Parts 61 and 65 (consolidated Federal Air Rule), to the extent referenced in 40CFR part 61, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CSR parts 61 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 61 must comply with the applicable NESHAPS and this rule.

45CSR15, in conjunction with 45CSR34, establishes general provisions for emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by USEPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by USEPA under 40CFR part 63 whereas 45CSR15, incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Emission Standards for Hazardous Air Pollutants for Asbestos.

#### **No Comments**

- **45CSR16 – “Standards of Performance for New Stationary Sources Pursuant to 40CFR Part 60”**

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule incorporates by reference New Sources Performance Standards (NSPS) promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 CFR Part 60 must comply with the applicable NSPS and this rule.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of July 1, 2005: Standards of performance for Industrial-Commercial-Institutional Steam Generating units; Stationary Gas Turbines; Steel Plants; and new and Existing Stationary Sources: Electric Utility Steam Generating Units (CAMR).

#### **No Comments**

- **45CSR25 – “To Prevent and Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities.”**

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in the Code of Federal Regulations as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods, which are appended to these standards. Any person, who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste management Program, the codified federal emission standards, and this rule.

45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

This revised rule incorporates by reference the following provisions of 40 CFR Part 262 promulgated as of June 1, 2005: National Environmental Performance Track Program.

**Comments:**

What does the term “constituents” mean and how does one decide whether a source has prevented emissions that would cause harm under section 1.1.b of the rule?

*Look at the definition of “hazardous waste” and prevention language is meant to set forth overall purpose of the rule.*

Does the agency consult with DHHR or other public health officials?

*No, the agency uses a risk-based approach and has a toxicologist employed. It also looks to EPA.*

- **45CSR33 – “Acid Rain Provisions and Permits”**

This rule establishes and adopts the general provisions and operating permit program requirements for affected sources under the Acid Rain Program promulgated by the United States Environmental Protection Agency (USEPA) under title IV of the Clean Air Act, as amended (CAA). The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these provisions. Under the Acid Rain Program and 45CSR33, no person may construct, modify, or operate or

cause to be constructed, modified, or operated, an Acid Rain Source in violation of 40CFR Parts 72 through 77.

Title IV of the CAA requires each state to implement an operating permit system conforming to Title IV and Title V of the CAA, as amended. 45CSR33 incorporates by reference the federal counterpart regulation 40 CFR Parts 72 through 77. USEPA approved West Virginia's Acid Rain Program with its approval of the state's Title V Operating Permit Program on December 15, 1995.

This revised rule incorporates by reference the following revisions to 40CFR Parts 72 through 77 promulgated as of June 1, 2005: Permits Regulation, Sulfur Dioxide Allowance System, Sulfur Dioxide Opt-Ins, continuous Emission Monitoring, Excess Emissions (CAIR & CAMR).

#### **No Comments**

- **45CSR34 – “Emission Standards for Hazardous Air Pollutants For Source Categories Pursuant to 40 CFR Part 63**

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in section 112(b) of the CAA. The rule incorporates by reference the NESHAP standards of 40 CFR Parts 63 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Part 63, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 63 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 63 must comply with the applicable NESHAPS and this rule.

45CSR34, in conjunction with 45CSR15, establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by U.S. EPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by U.S. EPA under 40 CFR Part 63 whereas 45CSR15 incorporates hazardous air pollutant standards promulgated by U.S. EPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Environmental Performance Track Program, National Emission Standards for Hazardous Air Pollutants for Source Categories, Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, Plywood & Composite Wood Products; Effluent Limitations Guidelines and Standards for Timber Products Point Source Category; List of HAPs, Lesser Quantity Designations, Source Category List, Printing, Coating & Dyeing of Fabrics and Other Textiles, Stationary Combustion Turbines, Solvent Extraction for Vegetable Oil Production, Industrial,



Commercial, Institutional Boilers and Process Heaters, Secondary Aluminum Production, Coke Ovens: Pushing, Quenching, and Battery Stacks, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List; Petition to Delist of Ethylene Glycol Monobutyl Ether, Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipments Leaks, Coke Ovens: Pushing, Quenching, and Battery Stacks, Leather Finishing Operations, Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, Revision of December 2000 Regulatory Finding on the Emissions of HAPs from Electric Utility Steam Generating Units & Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from Section 112(c) List, Generic MACT; Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, Coke Oven Batteries, Miscellaneous Coating Manufacturing, Pharmaceuticals Production, Asphalt Processing & Asphalt Roofing Manufacturing and Iron and Steel Foundries.

#### **No Comments**

- **45CSR37 – “Mercury Budget Trading Program to Reduce Mercury Emissions”**

This rule establishes the general provisions and designated representative, permitting, allowance and monitoring provisions for the Mercury (Hg) Budget Trading Program, as a means of reducing national mercury emissions, pursuant to the federal Clean Air Mercury Rule (CAMR) established under Section 111 of the Clean Air Act (CAA) and 40 CFR 60, Subpart HHHH.

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (15 March 2005, at FR XXXXX). The federal rule establishes standards of performance for mercury (Hg) for new and existing coal-fired electric utility steam generating units (utility units). This rule establishes a mechanism by which Hg emissions from new and existing coal-fired utility units are capped at specific nation-wide levels. U.S. EPA has specified that annual Hg emission reductions be implemented in two phases. The first phase of Hg reductions starts in 2010 and the second phase begins in 2018, and continues thereafter. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell Hg emission allowances from or to other program participants.

45CSR37 applies to coal-fired electric utility steam generating units that have greater than 25 MW<sub>e</sub> generating capacity.

#### **Comments:**

How will this affect Industrial boilers?

*The rule does not cover these sources.*

What kind of monitoring is required?

*Have to install CEMS.*

What happens when there is litigation?

*If court remands, we would withdraw the rule.*

Does the rule apply to natural gas-fired units?

*No, only coal-fired.*

Does the rule establish new fees?

*No.*

John Benedict informed the Council of the following reductions:

Nationally

2010 – 22%

2018 – 69%

WV:

2010 – 43%

2018 – 77%

- **45CSR39 – “Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides”**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO<sub>x</sub> Annual Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AA through II, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO<sub>x</sub>).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO<sub>x</sub> reduce annual emissions through the constraint of set

budgets. U.S. EPA is specifying that annual NO<sub>x</sub> emission reductions be implemented in two phases. The first phase of NO<sub>x</sub> reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO<sub>x</sub> emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell NO<sub>x</sub> emission allowances from or to other program participants. Reducing upwind NO<sub>x</sub> emissions will assist downwind PM<sub>2.5</sub> and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR39 applies to large fossil fuel-fired electric generating units that have greater than 25 MW<sub>e</sub> generating capacity. The CAIR NO<sub>x</sub> Ozone Season Trading Program requirements are set forth in 45CSR40.

**Comments:**

How will this affect industrial boilers?

*It will not. It only affects electric utilities.*

Is there a set-aside provision?

*Yes.*

Agency should consider using the money to clean up streams impacted by acid rain.

- **45CSR40 – "Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides"**

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO<sub>x</sub> Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO<sub>x</sub>).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO<sub>x</sub> reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO<sub>x</sub> emission reductions be implemented in two phases. The first phase of ozone season NO<sub>x</sub> reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO<sub>x</sub> emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-

based “cap and trade” provisions which allow sources to buy or sell NO<sub>x</sub> emission allowances from or to other program participants. Reducing upwind ozone season NO<sub>x</sub> emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO<sub>x</sub> SIP Call trading program, existing NO<sub>x</sub> SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO<sub>x</sub> reduction provisions must be “sunsetting” by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which effectively “sunsets” these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW, generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal combustion engines, by retaining the NO<sub>x</sub> SIP Call ozone season NO<sub>x</sub> emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO<sub>x</sub> Annual Trading Program requirements are set forth in 45CSR39.

#### **No Comments.**

- **33CSR41 – “Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide”**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR SO<sub>2</sub> Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAA through III, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and sulfur dioxide (SO<sub>2</sub>).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO<sub>2</sub> reduce annual emissions based upon the implementation of retirement ratios for SO<sub>2</sub> allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO<sub>2</sub> emission reductions be implemented in two phases. The first phase of SO<sub>2</sub> reductions starts in 2010 and requires retiring SO<sub>2</sub> allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO<sub>2</sub> allowances at a 2.86:1 ratio, and continues thereafter. The SO<sub>2</sub> emissions reductions requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell SO<sub>2</sub> emission allowances from or to other program participants. Reducing upwind SO<sub>2</sub> emissions will assist downwind PM<sub>2.5</sub> and 8-hour ozone nonattainment

areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR41 applies to large fossil fuel-fired electric generating units that have greater than 25 MW generating capacity.

How was the fiscal note derived?

*It is based on how many persons will be necessary to implement the rule.*

When will these rules be filed with EPA?

*September of 2006 for the CAIR rules and November 2006 for the mercury rule.*

- **33CSR1 – “Solid Waste Management Rule”**

This legislative rule establishes requirements for the siting (including location standards), financial assurance, installation, establishment, construction, design, groundwater monitoring, modification, operation, permitting, closure and post-closure care of any solid waste facility that processes, recycles, composts, transfers or disposes of solid waste pursuant to W. Va. Code §22-15-1 et seq.

The rule revision will clarify that the State Division of Highways is subject to an exemption from permitting for its construction/demolition wastes associated with highway construction. The rule will also clarify that the beneficial reuse of clean bituminous concrete (asphalt) is not subject to permitting requirements, just as the beneficial reuse of Portland cement is not subject to permitting.

Comments:

Has the agency worked with the Division of Highways on the rule?

*Yes.*

- **33-CSR20 – “Hazardous Waste Management”**

The purpose of this rule is to provide for the regulation of the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment. The rule changes pick up two new federal regulations.

No Comments.

- **35CSR3 – “Coalbed Methane Wells Rule”**

This rule applies to coalbed methane wells. The rule changes are necessary to conform to recent statutory revisions related to spacing. The changes also address new technology allowing for the horizontal drilling of wells.

**Comments:**

Are operators required to sample both water quality and quantity?

*Just quality.*

A question was raised about the 100' and 1000' distance requirements from water wells and the agency explained how these provisions work.

A comment was made that landowners are confused by the rule's requirements and some further explanations would be helpful.

- **39CSR1 – “Rules of the Commission”**

The rule is designed to prevent waste, protect correlative rights and to conserve oil and gas in the State of West Virginia and is applicable to all activities subject to the jurisdiction of the Oil and Gas Conservation Commission. Where special field rules apply, the special field rules shall govern to the extent of any conflict. The rule changes are to clarify the agency can enter consent agreements and establish escrow accounts.

**No comments.**

- **60CSR8 “Environmental Excellence Program Rule”**

This legislative rule establishes the eligibility, procedures, standards and legal documents required for establishing a voluntary environmental excellence program, consisting of incentives to reward facilities that go beyond regulatory requirements.

**Comments:**

Will the reports that are filed be shared with the public?

*Yes, they will be posted on the internet.*

Will people pay the \$1000 fee?

*From pre-comments, most are willing to pay some amount. The administrative fund will cover the agency's operating costs.*

A comment was made that there should be more programs like this, where companies are rewarded for good performance.

Lisa McClung, Director of DWWM, presented several rules under the water program that will be filed in the future. One was the concentrated animal feeding operation (CAFO) rule that was withdrawn by the agency in the 2005 session. As soon as EPA repromulgates its rule, the State will need to do so, perhaps by an emergency rule.

Then the new law transferring the authority to adopt water quality standards to the DEP was discussed. A question was raised concerning the public's involvement in the process. Ms. McClung responded that the process would be somewhat different from the agency's normal rulemaking.

Karen Watson then presented a list of bills passed by the Legislature during the 2005 regular session and signed by the Governor as follows:

**1. SB 428. Creating the Revitalization Environmental Action Plan.**

This legislation transfers the litter control and recycling programs from DNR to DEP and transfers the waste tire remediation program from DOH to DEP. The legislation was amended by the House to require the excess funds to be transferred to the state road fund rather than the solid waste reclamation and environmental response fund. SB 428 bill also incorporates the provisions of Senate Bill 42 at 22-15A-12(f) and (k). These provisions provide liability protection on waste tire remediation to bona fide purchasers of property containing waste tires.

**2. SB 603. Higher Education Bill – Brownfield Assistance Centers.**

This legislation creates a provision in W.Va. Code § 18B11-7 that authorizes Marshall University and West Virginia University to each create Brownfield Assistance Centers for the purpose of acquiring and developing property; seeking federal brownfield assistance funds; and providing assistance to municipalities and local governments for brownfields development.

**Comments:**

*The Council discussed the funding mechanisms under the new law.*

**3. HB 3354. Oil and Gas Permit Fee Increase.**

This legislation increases the permit fees for shallow wells from \$250 to \$400; the permit fees for deep wells from \$250 to \$650; and the reclamation fees for all well activity from \$100 to \$150. This legislation also includes some technical amendments to the statutes governing oil and gas and coal bed methane drilling and production. As introduced, the legislation increased the permit fees for coal bed methane wells from \$250 to \$650 but the legislation was amended by the Senate to eliminate this permit fee increase. In total, this legislation will generate approximately \$350,000 for the Office of Oil and Gas.

**4. SB 406. Uniform Environmental Covenant Act.**

This legislation clarifies that environmental covenants containing affirmative obligations issued pursuant to the Voluntary Remediation and Redevelopment Act or other federal or state response actions are enforceable and perpetual; provides notice requirements for those placing environmental covenants on real property; and authorizes the department and local governments to enforce environmental covenants.

**Comments:**

A question was raised as to local governments.

*The agency responded that they are included and have authority under the new law.*

**5. HB 2723. Environmental Rules Bundle.**

This legislation consolidates the rules proposed by DEP and EQB. The DEP rules include revisions to the air, waste, water and mining programs. The EQB's rule relates to water quality standards. The EQB's rule was amended to eliminate Fill Hollow Creek in Preston County that the Board recommended to be included on the Tier 2.5 list. Tier 2.5 waters are waters of special concern and include naturally reproducing trout streams.

**6. HB 3236. Thin Seam Coal Tax Applicability.**

This legislation clarifies that the special tax on coal production and the special reclamation tax apply to coal produced from thin seams.

**7. HB 2333. Environmental Good Samaritan Act.**

This legislation protect landowners, groups and individuals who volunteer to reclaim abandoned mineral extraction lands and abate water pollution caused by abandoned mine lands from civil and environmental liability provided such activities are approved by the department and implemented in accordance with the plans approved by the department.

**8. HB 3033. Continuation of Special Reclamation Tax.**

This legislation extends the temporary special reclamation tax of seven cents for an additional eighteen months thereby maintaining the total special reclamation tax at fourteen cents per ton of coal produced. The legislation also requires the Secretary to evaluate and consider additional bonding mechanisms, such as full cost bonding and the creation of a water quality trust fund.

**9. SB 154. Beneficial Reuse of Water Treatment Plant Sludge.**

This legislation authorizes the beneficial reuse of water treatment plant sludge and requires the department to develop rules establishing criteria for the beneficial reuse of water treatment plant sludge.

**10. SB 287. Transfer of Rulemaking Authority for Water Quality Standards.**

This legislation transfers the authority to promulgate water quality standards and the authority to grant remining variances from the Environmental Quality Board to the department.

**11. SB 748. Credit for Mitigation.**



This legislation authorizes the secretary to grant credit for mitigation required by the Corps of Engineers pursuant to permit issued under Section 404 of the Clean Water Act when such mitigation satisfies mitigation required by the West Virginia Water Pollution Control Act.

**12. SB 700. Creation of the Community Infrastructure Investment Program.**

This legislation authorizes department to grant approval for the construction of privately financed water and sewage treatment facilities without the requirement of a certificate of need and convenience from the Public Service Commission provided that the project results in economic development and improvement of water quality. This legislation also authorizes municipal utilities and public service districts to enter into community service agreements with private developers for the purpose of constructing or expanding public utilities. This legislation also requires the secretary to promulgate emergency rules to implement the program.

**Comments:**

*Two members expressed interest in the future rulemaking efforts and any stakeholders group.*

**13. HB 3356. Increasing authority of the Solid Waste Management.**

This legislation requires the SWMB to conduct biannual performance reviews of county and regional solid waste authorities and grants the SWMB with the authority to supersede or exercise the powers granted to county or regional solid waste authorities that operate a solid waste facility

**14. SB 455. Financing of Environmental Control Activities.**

This Legislation authorizes the public service commission to review and approve the use of environmental control bonds for environmental control activities by certain qualified electric utilities.

The next meeting date was scheduled for September 15, 2005 – 1:00 p.m. – 3:00 p.m. – Trish will contact everyone with room location and agenda.

Karen Watson adjourned meeting.

## APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"

Type of Rule:   X   Legislative        Interpretive        Procedural

Agency: Division of Air Quality

Address: 601 57<sup>th</sup> Street SE  
Charleston, WV 25304

Phone Number: 926-0475

Email: 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.

No impact above that resulting from currently applicable federal emission standards.

**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	2006 Increase/Decrease (use "-")	2007 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>
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>	<b>0</b>	<b>0</b>	<b>0</b>

Rule Title: 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

Costs anticipated to be incurred in the implementation of federal rules promulgated under 40 CFR Part 61 as of June 1, 2005 are included in prior cost estimates prepared for state implementation of Title V of the Clean Air Act, as amended, under 45CSR30. Full Title V program approval was issued by the U.S. Environmental Protection Agency on November 19, 2001.

### 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.

Date: June 15, 2005

Signature of Agency Head or Authorized Representative:

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

**TITLE 45  
LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY**

**SERIES 15  
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS  
PURSUANT TO 40 CFR PART 61**

**§45-15-1. General.**

1.1. Scope. -- This rule establishes and adopts emission standards for hazardous air pollutants promulgated by the United States Environmental Protection Agency pursuant to 40 CFR Part 61 and section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

1.2. Authority. -- W.Va. Code §22-5-4.

1.3. Filing Date. -- ~~May 20, 2005.~~

1.4. Effective Date. -- ~~June 1, 2005.~~

1.5. Incorporation by Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 CFR Parts 61 and 65, to the extent referenced in 40 CFR Part 61, effective ~~July 1, 2004, June 1, 2005.~~

1.6. Former Rules. -- This legislative rule amends 45CSR15 "Emission Standards For Hazardous Air Pollutants Pursuant to 40 CFR Part 61" which was filed ~~April 30, 2004~~ May 20, 2005,

and which became effective ~~June 1, 2004~~ June 1, 2005.

**§45-15-2. Definitions.**

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

2.2. "Clean Air Act" ("CAA") means 42 U.S.C. §§7401 et seq.

2.3. "Hazardous air pollutant" means any air pollutant listed pursuant to 40 CFR Part 61.01(a).

2.4. "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.5. Other words and phrases used in this rule, unless otherwise indicated, ~~shall~~ will have the meaning ascribed to them in 40 CFR Part 61. Words and phrases not defined therein ~~shall~~ will have the meaning given to them in the federal Clean Air Act.

**§45-15-3. Requirements.**

3.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, reconstructed, modified, or operated any source subject to the provisions of 40 CFR Part 61 which results or will result in a violation of this rule.

**§45-15-4. Adoption of Standards.**

4.1. Standards. -- The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Parts 61 and 65, to the extent referenced in 40 CFR Part 61, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 65, effective ~~July 1, 2004~~, June 1, 2005, for the purposes of implementing a program for emission standards for hazardous air pollutants, except as follows:

4.1.a. 40 CFR §61.16 is amended to provide that information shall be available to the public in accordance with W.Va. Code §§22-5-1 et seq., ~~W.Va. Code 29B-1-1 et seq.~~, and 45CSR31; and

4.1.b. Subparts B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of 40 CFR Part 61 ~~shall~~ will be excluded.

#### §45-15-5. Secretary.

5.1. Any and all references in 40 CFR Parts 61 and 65 to the "Administrator" are amended to be the "Secretary" except as follows:

5.1.a. where the federal regulations specifically provide that the Administrator ~~shall~~ will retain authority and not transfer ~~such~~ authority to the ~~State~~ Secretary;

5.1.b. where provisions occur which refer to:

5.1.b.1. alternate means of emission limitations;

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

5.1.b.5. alternate monitoring methods;

5.1.b.6. waivers/adjustments to record-keeping and reporting;

5.1.b.7. emissions averaging; or

5.1.b.8. applicability determinations;  
or

5.1.c. where the context of the regulation clearly requires otherwise.

#### §45-15-6. Permits.

6.1. Nothing contained in this adoption by reference ~~shall~~ must be construed or inferred to mean that permit requirements in accordance with applicable rules ~~shall~~ will in any way be limited or inapplicable.

#### §45-15-7. Inconsistency Between Rules.

7.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, ~~such~~ the inconsistency ~~shall~~ will be resolved by the determination of the Secretary and ~~such~~ the determination ~~shall~~ will be based upon the application of the more stringent provision, term, condition, method or rule.

### National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

### Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Volatile organic compounds, Ozone.

Dated: July 8, 2004.

Norman Niedergang,  
Acting Regional Administrator, Region 5.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

### Subpart KK—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (b)(12) to read as follows:

#### § 52.1885 Control strategy: Ozone.

\* \* \* \* \*

(b) \* \* \*

(12) Approval—On April 19, 2004, Ohio submitted a revision to the ozone maintenance plan for the Cincinnati, Ohio area. The revision consists of allocating a portion of the area's NO<sub>x</sub> safety margin to the transportation conformity motor vehicle emissions budget. The motor vehicle emissions budget for NO<sub>x</sub> for the Cincinnati, Ohio area is now 62.7 tons per day for the year 2010. This approval only changes the NO<sub>x</sub> transportation conformity emission budget for Cincinnati, Ohio.

\* \* \* \* \*

[FR Doc. 04-16333 Filed 7-19-04; 8:45 am]

BILLING CODE 6560-50-P

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 61

[OAR-2002-0082; FRL 7789-5]

#### National Emission Standards for Hazardous Air Pollutants for Asbestos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On September 18, 2003 (68 FR 54790), EPA issued amendments to the national emission standards for hazardous air pollutants (NESHAP) for asbestos under section 112 of the Clean Air Act (CAA). This action corrects typographical errors in Table 1 to the amendments that were promulgated on September 18, 2003.

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C.

553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the corrections to the final rule do not change the requirements of the final rule. They are minor technical corrections and are not controversial. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B) (see also the final sentence of section 307(d)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(d)(1), indicating that the good cause provisions of the APA continue to apply to this type of rulemaking under the CAA).

DATES: The final rule is effective on August 19, 2004.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR 2002-0082. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Air Docket. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. e.s.t., Monday through Friday, excluding legal holidays. The EPA Air Docket is located at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Fairchild, U.S. EPA, Minerals and Inorganic Chemicals Group (C-504-05), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5167, facsimile number (919) 541-5600, electronic mail address: [fairchild.susan@epa.gov](mailto:fairchild.susan@epa.gov).

**SUPPLEMENTARY INFORMATION: Regulated**

**Entities:** Entities potentially regulated by this action include:

Category	NAICS	Examples of regulated entities
Industrial .....	23	Construction.
Industrial .....	23594	Wrecking and Demolition Contractors.
Industrial .....	562112	Hazardous Waste Collection.
Industrial .....	562211	Hazardous Waste Treatment and Disposal.
Industrial .....	5629	Remediation and Other Waste Management Services.
Industrial .....	56191	Packaging and Labeling Services.
Industrial .....	332992	Small Arms Ammunition Manufacturing.
Industrial .....	33634	Motor Vehicle Systems Manufacturing.
Industrial .....	327	Nonmetallic Mineral Product Manufacturing.
Industrial .....	3279	Other Nonmetallic Mineral Product Manufacturing.
Industrial .....	32791	Abrasive Product Manufacturing.
Industrial .....	32799	All Other Nonmetallic Mineral Product Manufacturing.

**World wide Web (WWW).** In addition to being available in the docket, an electronic copy of this action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on EPA's TTN policy and guidance page for newly proposed or promulgated rules: <http://www.epa.gov/ttn/oarpg>. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control.

**I. Background**

On November 20, 1990, the **Federal Register** published EPA's revision of the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61,

subpart M, (55 FR 48406). That rule contained regulatory provisions for the labeling of asbestos waste that cited to regulations then in place from the Occupational Safety and Health Administration (OSHA) for proper labeling of asbestos waste. Subsequent to the publication of that rule, OSHA renumbered the provisions cited in the asbestos NESHAP.

On September 18, 2003, the **Federal Register** published EPA's amendments to the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M, (55 FR 48406). Those amendments correctly identify the current OSHA regulatory citations for properly labeling asbestos waste that is managed under the asbestos NESHAP.

However, typographical errors occurred in Table 1: Cross Reference to Other Asbestos Regulations in the **Federal Register** publication of that notice and today's final rule amendments correct the errors.

**II. Final Rule Amendments to the Asbestos NESHAP**

The current OSHA permissible exposure limit (PEL) is 0.1 fibers per cubic centimeter (f/cc). However, Table 1 found at 40 CFR 61.156 erroneously identifies the OSHA PEL as 0.2 f/cc. Today's action corrects Table 1 at 40 CFR 61.156, to reference the OSHA regulation but the NESHAP will not reference the current level of the PEL. Therefore, the section of Table 1 which is being corrected now reads as follows:

TABLE 1.—CROSS-REFERENCE TO OTHER ASBESTOS REGULATIONS

Agency	CFR citation	Comment
OSHA .....	29 CFR 1910.1001 .....	Worker protection measures—engineering controls, worker training, labeling, respiratory protection, bagging of waste, permissible exposure level.
	29 CFR 1926.1101 .....	Worker protection measures for all construction work involving asbestos, including demolition and renovation-work practices, worker training, bagging of waste, permissible exposure level.

We find for good cause under 5 U.S.C. 553(b)(B) that notice and comment procedures are unnecessary, and we are not soliciting comments on the amendments. The corrections are nonsubstantive in nature and do not affect the requirements for subject persons under the regulations. The regulations will continue to cite to the same OSHA regulations, and merely revise commentary statements accompanying the citations. In addition, the changes are noncontroversial and simply correct two typographical errors. Finally, the final rule amendments raise no new substantive issues beyond those raised in the previous direct final rule

and notice of proposed rulemaking published on September 18, 2003. The EPA received no adverse comments regarding those notices, so an additional period of public comment is unnecessary.

**III. Statutory and Executive Order Reviews**

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule does

not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of

the Unfunded Mandates Reform Act. The final rule does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132, Federalism (64 FR 43255, August 10, 1999). Today's action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Also, the final rule is not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 1985, April 23, 1997) because it is not economically significant. The final rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The final rule does not involve changes to the technical standards related to test methods or monitoring methods; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. Also, the final rule

does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). The EPA has complied with Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings) (53 FR 8859, March 15, 1988) by examining the takings implications of the final rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. In issuing the final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, Civil Justice Reform (61 FR 4729, February 7, 1996). The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 61

Environmental protection, Asbestos, Air pollution control, Hazardous substances.

Dated: July 13, 2004.

**Robert Brenner,**  
Acting Assistant Administrator, Office of Air and Radiation.

■ For the reasons stated in the preamble, title 40, chapter I, part 61 is amended as follows:

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 61.156 is amended by revising Table 1 to read as follows:

#### § 61.156 Cross-reference to other asbestos regulations.

\* \* \* \* \*

TABLE 1.—CROSS-REFERENCE TO OTHER ASBESTOS REGULATIONS

Agency	CFR citation	Comment
EPA .....	40 CFR part 763, subpart E .....	Requires schools to inspect for asbestos and implement response actions and submit asbestos management plans to States. Specifies use of accredited inspectors, air sampling methods, and waste disposal procedures.
	40 CFR part 427 .....	Effluent standards for asbestos manufacturing source categories.
	40 CFR part 763, subpart G .....	Protects public employees performing asbestos abatement work in States not covered by OSHA asbestos standard.
OSHA .....	29 CFR 1910.1001 .....	Worker protection measures—engineering controls, worker training, labeling, respiratory protection, bagging of waste, permissible exposure level.
	29 CFR 1926.1101 .....	Worker protection measures for all construction work involving asbestos, including demolition and renovation-work practices, worker training, bagging of waste, permissible exposure level.
MSHA .....	30 CFR part 56, subpart D .....	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in surface mines.
	30 CFR part 57, subpart D .....	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in underground mines.
DOT .....	49 CFR parts 171 and 172 .....	Regulates the transportation of asbestos-containing waste material. Requires waste containment and shipping papers.



\* \* \* \* \*

[FR Doc. 04-16447 Filed 7-19-04; 8:45 am]  
BILLING CODE 5560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 93

[FRL-7789-6]

RIN 2060-AL73

RIN 2060-AI56

### Transportation Conformity Rule Amendments for the New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes; Correction to the Preamble

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

**SUMMARY:** EPA issued a final rule on July 1, 2004 (69 FR 40004) that amended the transportation conformity rule to include criteria and procedures for the new 8-hour ozone and fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS or "standards"). The final rule also

addressed a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). The preamble to the final rule contains two errors. This notice is intended to correct these errors. All other preamble and regulatory text printed in the July 1, 2004 final rule is correct.

The Department of Transportation (DOT) is EPA's federal partner in implementing the transportation conformity regulation. We have consulted with DOT on the development of these corrections, and DOT concurs.

**DATES:** *Effective Date:* August 2, 2004.

**FOR FURTHER INFORMATION CONTACT:** Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, [patulski.meg@epa.gov](mailto:patulski.meg@epa.gov), (734) 214-4842; Rudy Kapichak, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, [kapichak.rudolph@epa.gov](mailto:kapichak.rudolph@epa.gov), (734) 214-4574; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection

Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, [berry.laura@epa.gov](mailto:berry.laura@epa.gov), (734) 214-4858.

**SUPPLEMENTARY INFORMATION:** EPA issued a final rule on July 1, 2004 (69 FR 40004) that amended the transportation conformity rule to include criteria and procedures for the new 8-hour ozone and fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS or "standards"). The final rule also addressed a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). The preamble to the July 1, 2004 final rule contains two errors. This notice is intended to correct these errors.

First, the table in Section II. D. What Parts of the Final Rule Apply to Me? (69 FR 40006-7), which lists the issues addressed in the final rule, is incomplete and contains a number of incorrect references to other sections of the rule. The table provides a roadmap for determining whether a specific final rule revision included in the July 1, 2004 rulemaking would apply in your area. The table illustrates which parts of the final rule are relevant for various pollutants and standards.

The following is the corrected table:

Type of area	Issue addressed in final rule	Preamble section	Regulatory section
8-hour ozone .....	Conformity grace period .....	III.A .....	§ 93.102(d)
	Revocation of 1-hour ozone standard .....	III.B .....	Not applicable.
	General implementation of new standards .....	III.C .....	Not applicable.
	Early Action Compacts .....	III.D .....	Not applicable.
	Baseline year test .....	IV.B .....	§ 93.119(b)
	Build/no-build test (marginal classification and subpart 1 areas <sup>1</sup> ) .....	IV.C .....	§ 93.119(b)(2), § 93.119(g)(2)
	Regional conformity tests (moderate and above classifications) .....	IV.D .....	§ 93.119(b)(1)
	Regional conformity tests (areas without 1-hour ozone budgets) .....	V .....	§ 93.109(d)
	Regional conformity tests (areas with 1-hour ozone budgets) .....	VI .....	§ 93.109(e)
	Federal projects during a lapse .....	XIV .....	§ 93.102(c), § 93.104(d)
	Adequacy process of submitted SIPs .....	XV .....	§ 93.118(e)
	Non-federal projects during a lapse .....	XXIII.G .....	§ 93.118(f)
	Consequences of SIP disapprovals .....	XVI .....	§ 93.121(a)
	Safety margins .....	XVII .....	§ 93.120(a)(2)
	Frequency .....	XVIII .....	Deletes § 93.124(b) of previous rule.
	Latest planning assumptions .....	XIX .....	§ 93.104(c), § 93.104(e)
	Relying on a previous analysis .....	XX .....	§ 93.110(a)
	Definitions .....	XXII .....	§ 93.122(g), § 93.104(b), § 93.104(c)
	Insignificance .....	XXIII.A .....	§ 93.101
	Transportation plan and modeling requirements (moderate and above classifications) .....	XXIII.B .....	§ 93.109(k), § 93.121(c)
	Non-federal projects (for isolated rural areas only) .....	XXIII.D .....	§ 93.106(b), § 93.122(c)
	Implementation of budget test .....	XXIII.F .....	§ 93.121(b)(1)
		XXIII.H .....	§ 93.118(b)
		XXIII.I .....	§ 93.118(d)

<sup>1</sup> "Subpart 1 areas" are areas that are designated nonattainment under subpart 1 of part D of title 1

of the Clean Air Act. EPA also referred to these areas as "basic" nonattainment areas in its April 30,

2004 final designations rule for the 8-hour ozone standard (69 FR 23862).