WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #3

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

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

AMENDMENT TO AN EXISTING RULE: YES X , NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: "To Prevent and Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Kara G. Watson, Attorney
Authorized Signature

$17.00

Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone: (304) 759-0515
Fax: (304) 759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

July 29, 1999

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

RE: 45CSR4 - "To Prevent and Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"

Dear Ms. Cooper:

This letter is to give my approval for filing of the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of an Agency-Approved Rule."

Your cooperation in this matter is very much appreciated. If you should have questions or need additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely yours,

Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp
Karen Watson
Carrie Chambers

Questionnaire

DATE: August 5, 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: 45CSR4 "To Prevent and Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"

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:
June 16, 1999 and July 14, 1999

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

I. Class I legal advertisement. *Charleston Daily Mail* and *CharlestonGazette*
II. Sent a copy of the Public Notice to our agency mailing list.
III. DEP's "*Public Notice Bulletin*" (June and July issues)
IV. Public Notices placed on agency's Web site:
http://www.dep.state.wv.us/oaq/
V. Press Release

c. Date of Public Hearing (s) or Public Comment Period ended:

Public Hearing -- July 19, 1999
Public Comment Period ended -- July 28, 1999

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received

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

August 5, 1999

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

Edward L. Kropp, Chief
1558 Washington Street, East
Charleston, WV 25311-2599
Phone: 304-558-4022
Fax: 304-558-3287
E-Mail: skropp@mail.dep.state.wv.us

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)

See "f" above

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

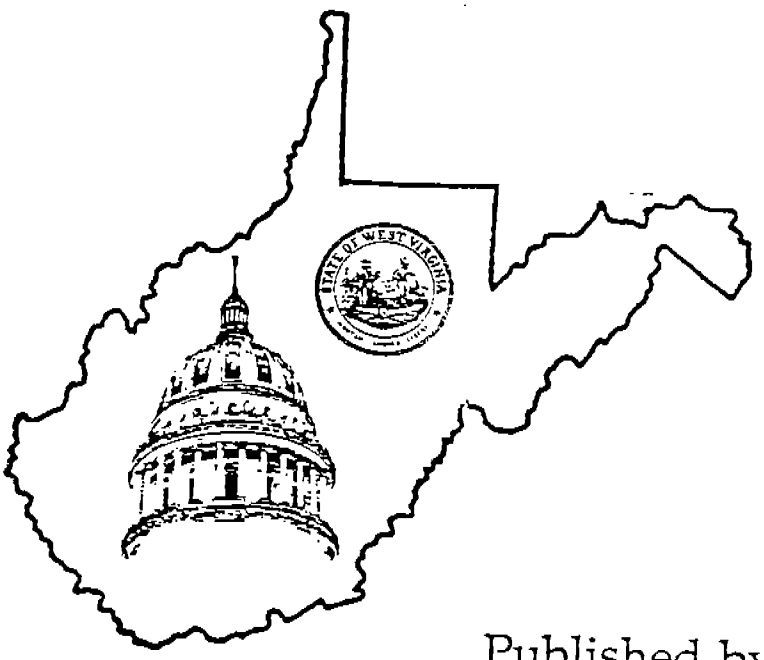
c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

45CSR4



WEST VIRGINIA REGISTER

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A Weekly Publication

Administrative Law Division

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Director

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PROPOSED RULES FILED FOR PUBLIC HEARING			
AGENCY	**RULE/TYPE**	**AUTHORITY**	**HEARING/COMMENT PERIOD/LOCATION**
Air Quality (45-2)	To Prevent & Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Extenstion of Written Comments Only: Edward L. Kropp, Chief Ofc of Air Quality 1558 Washington St E Charleston WV 25311-2599
Air Quality (45-3)	To Prevent & Control Air Pollution from the Operation of Hot Mix Asphalt Plants Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Administration (148-7)	State Purchasing Card Program $3.60 Legislative	7/2/1998	8/3/1998		8/3/1998	Modified & Approved 10/19/1998 Filed 10/29/1998	SB 272	5/18/1999	5/18/1999
Agriculture (61-1)	Animal Disease Control** $8.40 Legislative	5/14/1998	6/15/1998	5/14/1998 Effective 6/25/1998	6/18/1998	Modified & Approved 7/14/1998 Filed 7/16/1998	SB 269	4/13/1999	4/13/1999
Agriculture (61-7A)	Marketing of Eggs Regulations $3.20 Legislative	5/10/1999	6/11/1999		6/30/1999				
Air Quality (45-2)	To Prevent & Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers $10.00 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-3)	To Prevent & Control Air Pollution from the Operation of Hot Mix Asphalt Plants $5.80 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air which Causes or Contributes to an Objectionable Odor or Odors $5.40 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas $7.20 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse $5.80 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations $8.00 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						

LEGISLATIVE

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FORM #2

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NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--
NOTICE OF EXTENSION OF COMMENT PERIOD

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 X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: "To Prevent and Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED ____

TITLE OF RULE BEING PROPOSED ____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 28, 1999 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS

Edward L. Kropp , Chief

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Edward L. Kropp Kara G. Waters

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FORM #2

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NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--
NOTICE OF EXTENSION OF COMMENT PERIOD

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 X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED. ____

TITLE OF RULE BEING PROPOSED. ____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 28, 1999 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS

Edward L. Kropp , Chief

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Edward L. Kropp Kara G. Waters

OTHER

NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

The West Virginia Division of Environmental Protection, Office of Air Quality, hereby provides notice of the extension of the public comment period previously established for proposed revisions to the following legislative rules:

45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Disposal Areas"

45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"

45CSR3 "To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants"

45CSR4 "To Prevent and Control the Discharge of Air Pollutants into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"

45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"

45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse"

45CSR7 "To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations"

45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides"

45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide"

45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

45CSR17 "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"

45CSR18 "To Prevent and Control Particulate Air Pollution from Direct Heat-Fuing Devices"

45CSR23 "To Prevent and Control Emissions from Municipal Solid Waste Landfills"

45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR33 "Acid Rain Provisions and Permits"

45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.

Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.

Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, 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 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval 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 45CSR16 and 45CSR34, the Office of Air Quality will seek Federal delegation of authority from the U.S. Environmental Protection Agency to implement and enforce the revised standards.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR23, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.

Upon authorization and promulgation of revisions to 45CSR33, the rule will be submitted to the Environmental Protection Agency as part of the State's Acid Rain Program.

The public comment period, previously set to expire at the close of the public hearing on July 19, 1999, will be extended up to and including July 28, 1999, at 5:00 p.m. to permit the receipt of written comments, which will be made a part of the rulemaking record. The public hearing set for July 19, 1999, at 6.00 p.m. will be held as previously noticed. Comments will not be accepted by e-mail. The public may submit written comments by mail or other delivery to the Office of Air Quality through July 28th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief
Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules are available for public review at the Office of Air Quality's Charleston office at the above address.

OTHER

Stuart Rosen
Senior Attorney

July 13, 1999

BY OVERNIGHT MAIL

Mr. Bill Harrington
Office of the Secretary of State
State Capitol Building
157K
Charleston, West Virginia 25305

Re: West Virginia Statutes, Section 47 2A-3(b)

Dear Mr. Harrington:

Pursuant to the provisions of the above statute, enclosed is a booklet containing BMI's music licensing agreements and related documents, along with a certification from our corporate secretary, which constitutes our current filing of such materials under the Act. This complete set of agreements should be substituted for the agreements filed last year.

I understand that there is no fee for filing these materials.

If you have any questions or comments about the enclosures, please feel free to contact me. In addition, I would appreciate your acknowledging receipt of this letter by signing and returning an extra copy in the enclosed envelope.

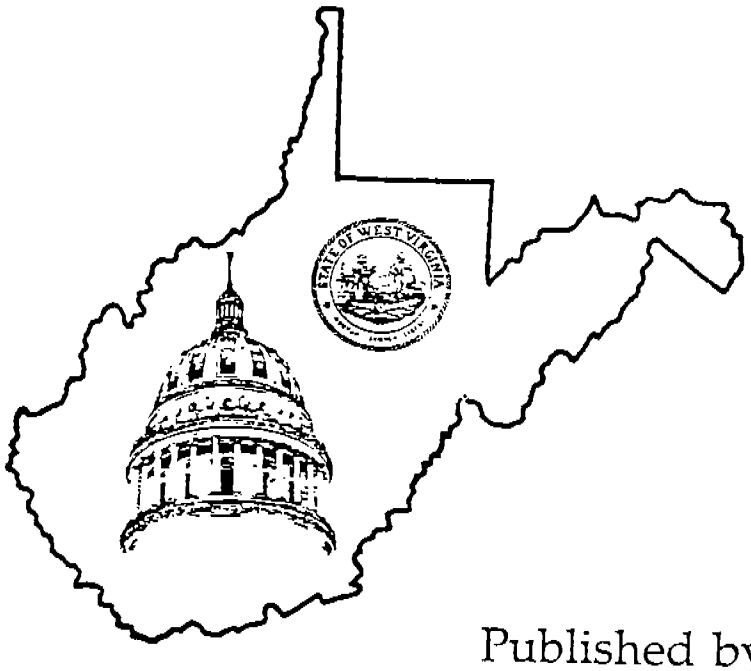
Very truly yours,

Stuart Rosen

RECEIVED:

320 West 57th Street, New York, NY 10019-3790 (212) 830 2582 Fax (212) 397-0789 E Mail srosen@bmi.com

45CSR4



WEST VIRGINIA REGISTER

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CONTENTS

PROPOSED RULES FILED FOR PUBLIC HEARING

AGENCY	RULE/TYPE	AUTHORITY	HEARING/COMMENT PERIOD/LOCATION
Air Quality (45-2)	To Prevent & Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Office of Air Quality - Conference Rm 1558 Washington Street East Charleston, WV 25311 Written Comments to: Edward L Kropp, Chief Office of Air Quality 1558 Washington Street East Charleston, WV 25311
Air Quality (45-3)	To Prevent & Control Air Pollution from the Operation of Hot Mix Asphalt Plants Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air which Causes or Contributes to an Objectionable Odor or Odors $5.40 Legislative	6/16/99	7/19/99						
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas $7.20 Legislative	6/16/99	7/19/99						
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse $5.80 Legislative	6/16/99	7/19/99						
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations $8.00 Legislative	6/16/99	7/19/99						
Air Quality (45-8)	Ambient Air Quality Standards for Sulfur Oxides & Particulate Matter $2.60 Legislative	6/16/98	7/21/98		7/31/98	Modified & Approved 1/12/99 Filed 1/22/99	HB 2533	6/1/99	8/30/99
Air Quality (45-9)	Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide & Ozone $2.40 Legislative	6/16/98	7/21/98		7/31/98	Modified & Approved 12/15/98 Filed 1/5/99	HB 2533	6/1/99	8/30/99
Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides $7.00 Legislative	6/16/99	7/19/99						
Air Quality (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide $5.20 Legislative	6/16/99	7/19/99						

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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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 X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED 4

TITLE OF RULE BEING AMENDED "To Prevent and Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING July 19, 1999 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality - Conference Room
1558 Washington Street, East
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Edward L. Kropp, Chief
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311-2599

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.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL.

Karen G. Watson

Karen G. Watson, Attorney

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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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 X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 19, 1999 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality - Conference Room
1558 Washington, Street East
Charleston, WV 25311

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Mr. Edward L. Kropp, Chief
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311

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.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

Karen G. Watson

OTHER

NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD

On Monday, July 19, 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:

45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Disposal Areas"

45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"

45CSR3 "To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants"

45CSR4 "To Prevent and Control the Discharge of Air Pollutants into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"

45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"

45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse"

45CSR7 "To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations"

45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides"

45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide"

45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

45CSR17 "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"

45CSR18 "To Prevent and Control Particulate Air Pollution from Direct Heat-Firing Devices"

45CSR23 "To Prevent and Control Emissions from Municipal Solid Waste Landfills"

45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR33 "Acid Rain Provisions and Permits"

45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.

Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.

Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, 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 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval 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 45CSR16 and 45CSR34, the Office of Air Quality will seek federal delegation of authority from the U. S. Environmental Protection Agency to implement and enforce the revised standards.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U. S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR23, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.

Upon authorization and promulgation of revisions to 45CSR33, the Office of Air Quality will submit this rule to the U. S. Environmental Protection Agency as part of the State's Acid Program.

The hearing will be held in the Office of Air Quality's Conference Room located at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral comments by the public will be accepted until the close of the hearing on July 19th and will be made a part of the rulemaking record. Comments will not be accepted by e-mail. The public may also submit written comments by mail or other delivery to the Office of Air Quality through July 19th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief
Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 18, 1999 at the Office of Air Quality's Charleston office.

NOTICE OF PUBLIC HEARING

On Thursday, July 22, 1999 beginning at 7:00 p.m., the Office of Air Quality of the West Virginia Division of Environmental Protection (WVDEP) will hold a public hearing on proposed revisions to the State Implementation Plan (SIP) to attain and maintain compliance with the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2). The proposed plan revisions affect American Electric Power's Kammer Plant, Columbian Chemical Company, PPG Industries Inc. and Bayer Corporation, all of which are located in Marshall County, West Virginia.

The WVDEP proposes to enter Consent Orders with the aforementioned companies or, if necessary, seek modification to rule 45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides" to establish new sulfur dioxide emission limits or other requirements necessary to assure attainment of the sulfur dioxide NAAQS in Marshall County.

Upon entry of the proposed Consent Orders and/or promulgation of a revised 45CSR10, these documents, in conjunction with supporting documentation and analysis will be submitted to the United States Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act as amended.

The hearing will be held at the Grave Creek Mound Historical Site located at 801 Jefferson Avenue, Moundsville, WV 26041. Written and oral testimony by all interested parties will be accepted and made part of the record, which will be closed at the conclusion of the public hearing. Submittal of comments by electronic mail will not be accepted.

Persons interested in submitting written comments prior to the hearing should send them to:

Tim J. Carroll, Assistant Chief
Office of Air Quality
Northern Panhandle Regional Office
1911 Warwood Avenue
Wheeling, WV 26003

Copies of the draft Consent Orders and supporting documentation will be available for public review at the following locations on and after June 21, 1999:

Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: 45CSR4 - "TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS"

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

B. SUMMARY OF RULE:

This rule amends the existing rule which was effective on October 1, 1967. The rule is intended to prevent and control the discharge of pollutants into the open air which causes or contributes to an objectionable odor or odors.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Amendments to this rule are needed to clarify the intent of the rule, update the content of the rule for consistency with currently available technology, and to improve the effectiveness of the rule. The revisions proposed herein were initiated by the Office of Air Quality as part of a broad effort to modernize and streamline all of the Agency rules. The current revision process is also intended to update and harmonize this rule with other rules of the Office of Air Quality. The proposed revisions are the result of a thorough review in a stakeholder process that was inclusive of the Office of Air Quality, representatives of the regulated community, concerned citizens and the environmental community.

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

There is no federal counterpart regulation; therefore, a determination of stringency is not 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 their June 10, 1999 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. There were no substantial changes as a result of their discussion. (See attached minutes of that meeting.)

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

June 10, 1999, Director's Conference Room, Nitro

The sixteenth meeting of the DEP Advisory Council was held Thursday, June 10, 1999, in the Director's Conference Room located in Nitro. Chairman Mike Miano called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Miano, Chairman
Jacqueline Hallinan
William Raney
Rick Roberts
William Samples

Environmental Protection:

Bill Adams	Pam Nixon
Andy Gallagher	Rocky Parsons
Tony Grbac	Cap Smith
Randy Huffman	Charlie Sturey
Mike Johnson	Barbara Taylor
Mike Lewis	Karen Watson
Robert Keatley	Mike Zeto

1) Review and Approval of March 22, 1999 Minutes. Chairman Miano called the meeting to order at 10:00 a.m. The first item on the agenda was approval of the minutes of the March 22 Advisory Council; they were approved as written.

2) Discussion of Proposed Rule Amendments - 2000 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's new rule-making procedure that was implemented by Director Miano in September 1998 to involve the Advisory Council in DEP's rule-making process as early as possible to enable the Council to review, comment, and make recommendations to the Director on DEP's proposed legislative rule changes before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

Chairman Miano said he would like to begin by saying he hoped all Council members had received their draft rules by E-mail without any complications and they were able to review them before the meeting. He informed the Council that due to the large number of rules being proposed for the 2000 Legislative Session, DEP's program offices would review them with the

Council as thoroughly as possible, in the allotted time frame, and try to answer any questions or concerns the Council may have.

The following Office of Air Quality's proposed rule amendments were discussed by Karen Watson, OAQ, with assistance from Richard Keatley, also from the OAQ office:

- 45CSR1 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COAL REFUSE DISPOSAL AREAS"
- 45CSR2 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM COMBUSTION OF FUEL IN INDIRECT HEAT EXCHANGERS"
- 45CSR3 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF HOT MIX ASPHALT PLANTS"
- 45CSR4 - "TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS"
- 45CSR5 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS"
- 45CSR6 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE"
- 45CSR7 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MANUFACTURING PROCESSES AND ASSOCIATED OPERATIONS"
- 45CSR10 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE EMISSION OF SULFUR OXIDES"
- 45CSR12 - "AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE"
- 45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"
- 45CSR17 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER"
- 45CSR18 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM DIRECT MEAT-FIRING DEVICES"
- 45CSR23 - "TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS"
- 45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES"
- 45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"
- 45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"

Karen began by bringing the Council up to date on the status of two OAQ rules that were filed during the last session (or late in the session). 45CSR8 revised the ambient air quality for sulfur oxides and particulate matter, and 45CSR9 pertained to ambient air quality standards for carbon monoxide and ozone. The DC Circuit Court of Appeals has ordered EPA to show how they arrived at the new standards - EPA may go back to the previous standards. Karen also apprised the Council on the N_{ox} State Implementation Plan. The Circuit Court stayed the implementation of that rule and there are no plans to develop any other amendments in the

immediate future. 45CSR28, which is the emissions trading rule that was filed late in the 1999 Session, was not taken up by the Legislature, but plans are to put the rule on the July agenda of the Interim Legislative Committee.

Karen explained the reason for the unusually large number of DEP rules that are being filed for the next Legislative Session. She informed the Council that several of the rules were outdated and were amended for consistency and streamlining, and are a result of months of on-going meetings with stakeholders -- involving both the regulated community and citizens. A particulate matter and sulfur oxide work group was also involved. Those rule amendments as a result of the stakeholders process include: 45CSR1 (which is being repealed and replaced with language in 45CSR5), 45CSR2, 3, 4, 5, 6, 7, 10, 12, 17, and 18 (which is being repealed since the rule is no longer deemed necessary). The amendments to the remainder of the rules, 45CSR16, 23, 25, 33, and 34 were necessary to adopt by reference definitions, clarifications, technical amendments, etc., recently adopted by US EPA.

After several minutes of discussion, the Advisory Council recommended to the Director that the following amendments be made to the OAQ rules:

Mr. Samples pointed out that 45CSR2 and 45CSR7 contain different definitions for the term "opacity." The agency responded that this discrepancy was inadvertent and the language should be as it is in 45CSR2. The agency agreed to revise 45CSR7, subsection 2.23, accordingly.

Mr. Larry Harris was unable to attend the meeting; however, he expressed the following comments on 45CSR10 and 45CSR33 by e-mail. He stated that the State's rules should be more stringent than the federal counterpart regulations, since the State's streams are being adversely impacted. The agency responded that, at this point in time, it does not possess sufficient evidence to make the written finding that is required by WV Code §22-2-3a before promulgating a rule which is more stringent than a counterpart federal regulation.

Cap Smith and Mike Zeto discussed the following Office of Waste Management proposed rule amendments:

- **33CSR2 - "Sewage Sludge Management Rule"**
- **33CSR20 - "Hazardous Waste Management Rule"**

Mike Zeto briefed the Council on the proposed amendments to 33CSR2. He stated that in 1996 the Legislature mandated DEP to perform a study on soil limitations for sewage sludge land application sites. These amendments (as a result of the study) were to be proposed by June 30, 1999. Other amendments to the rule include specifying the analytical method used for soil analysis, placing conditions on variances from the soil limits for land application sites, providing an incentive for municipalities to produce higher quality compost products, and adjusting the sewage sludge limits for four metals. Mr. Zeto told the Council these amendments are being proposed to update other related areas of the rule in an attempt to provide better management of sewage sludge within the state.

Cap Smith discussed 33CSR20 with the Council. He informed the Council that amendments are proposed in section 2 of the rule that will allow the Office of Waste Management to delist hazardous wastes, which has previously been handled by EPA. The other significant amendments that are being proposed by adoption of the Federal Register pertain to revision standards for owners and operators of closed and closing hazardous waste management facilities, post closure permit requirements, and the closure process. These amendments are referenced throughout the rule and will hopefully expedite site cleanup while maintaining environmental protection.

There were several minutes of discussion on OWM's proposed rule amendments; however, no recommendations were made to the Director concerning the amendments.

Mike Lewis, Office of Oil and Gas, discussed the following new proposed rule:

- **35CSR7 - "Well Operations - Within and Around Gas Storage Reservoirs"**

Mike informed the Council that 35CSR7 is a proposed "new" rule for the O&G Office. The rule is needed to provide protection of the environment, the public, and the state's natural gas resources. It is the intent of the proposed rule to accomplish this by addressing certain operating procedures that oil and gas and gas storage operators are to use when drilling into or through a gas storage reservoir or the gas storage reservoir protective area. In order to assure absence of leaking gas, the proposed rule requires gas storage operators to conduct monitoring and inspections of gas storage wells.

There were no questions or discussion by the Council on this proposed rule.

The following proposed rules were discussed by the Office of Mining and Reclamation:

- **38CSR2 - "Surface Mining and Reclamation Rule"**
- **38CSR2A - "Rules for Mining and Restoration for Sandstone, Limestone, and Sand"**
- **38CSR2B - "RULES FOR MINING AND RECLAMATION OF MINERALS OTHER THAN COAL"**

Ed Griffith, Office of Surface Mining, discussed the proposed amendments to the Surface Mining and Reclamation Rule. Ed told the Council that there are only minor amendments being proposed to this year's rule. The proposed definition of "woodlands" in subsection 2.136 relates to the utilization of commercial woodlands in Approximate Original Contour variance areas. This change is being proposed in order for the state to meet the federal policy that is expected to change in July 1999. The proposed amendment to change the bonding requirements of mining operations that request variances from contemporaneous reclamation to the maximum amount per acre bond ($5,000 per acre) is found in subdivision 14.15.f. All other amendments are being proposed in order to meet the requirements of the Office of Surface Mining's program amendments.

Rocky Parsons, OMR's Philippi Office, next addressed OMR's proposed rules 38CSR2A and 2B. Rocky explained to the Council members that 38CSR2B has been in place since 1983 and regulates all minerals other than coal. However, in accordance with the requirement that separate rules for limestone, sandstone, and sand are to be promulgated, DEP is proposing

38CSR2A which will regulate only those minerals - 38CSR2B will regulate all minerals other than limestone, sandstone, sand, and coal. Both proposed rules will regulate roads, blasting, drainage control, methods of operation, excess spoil disposal, revegetation, mapping, transfer of permits, permit renewals, revisions and incidental boundary revisions. 38CSR2A will provide provisions for restoration and 38CSR2B will include provisions for reclamation. Rocky gave the Council a brief history on the roadblocks the agency has encountered in the past several years in their attempt to amend the quarry statute. He said since the agency has been unsuccessful in that approach, it has become necessary to try to accomplish this through rule making. He informed the Council of a public meeting held the previous week to discuss the two proposed rules. He said the meeting was well attended and he believes the rules were well received by everyone in attendance.

The three OMR proposed rules were discussed by the Council members. Bill Raney said that although Rocky stated that the quarry rules have been well received by industry and the citizens, he is concerned about whether there has been enough time for the review of the proposed rules after they were drafted. He believes there would be a smoother transition into the rule making process, i.e., the public hearing/comment period, etc., if there had been more involvement from outside DEP during the drafting of the rules.

Mr. Larry Harris commented by e-mail 38CSR2A and 2B. His question is whether the siltation measures include silt fences where runoff might enter streams. He said it is not apparent what best management practices are for this situation, and he wonders if it needs to be spelled out. He knows of some operations in quarries where streams muddy after rainfalls, such as the Elkins and Waco quarries near Snowshoe, and he feels this is harming the streams. Do the new rules address this?

Rocky Parsons responded by saying that design criteria for drainage control structures is found in the technical handbook. Silt fences are not adequate for sediment control. The drainage system must be designed to hold .125 ac/ft of sediment for each acre of disturbed land. All runoff must pass through a drainage control structure. There is a provision for less sediment control (1/2 factor) for certain circumstances as approved by the Director. Effluent limits as established in the NPDES permit must be met.

Tony Grbac, Office of Surface Mining, addressed the following rule:

199CSR1 - "SURFACE MINING BLASTING RULE"

Tony began by briefing the Council on the history of the Surface Mining Blasting Rule. This rule is being proposed to comply with SB681 - passed during the last session. This bill created the Office of Explosives and Blasting and the Office of Coalfield Community Development, which is under the West Virginia Development Office. The proposed rule will regulate blasting laws and rules associated with all surface-mining operations. All duties currently performed by OMR related to blasting, and all rules which now regulate blasting (38CSR2C) will be transferred to this new office. Besides regulating blasting on all surface mining operations, it will also implement and oversee pre-blast survey processes; maintain and operate a system to receive and address questions, concerns and complaints relating to mining

operations; determine the qualifications for individuals and firms performing pre-blast surveys; establish the education, training, examination and certification of blasters; administer a claims process for property damage caused by blasting; and conduct a study of blasting and make recommendations regarding any appropriate rule or code changes.

Tony explained that the revenue generated by the proposed fee in 199CSR1 (one-half cent times the number of pounds of explosive material used ruing the preceding month for any purpose on the surface mining operations) would fund both the offices, as required by SB681. After one year of collection, both offices are to report to the Legislature as to whether the revenue collected is sufficient to operate both offices.

After several minutes of discussion between DEP and the Council members, Bill Raney expressed his concern in filing the rule for public hearing in the specified time frame. Mr. Raney asked if anyone outside DEP has been involved in drafting the rule. OMR answered by saying the rule was drafted by several staff within OMR. Mr. Raney replied that he believes there will be serious concerns with this rule once industry has had an opportunity to review it. He believes the rule drafting process definitely needs input from firms and individuals outside DEP, and he thinks the process will go smoother once everyone has had the opportunity to address their concerns. Mr. Raney recommended that the Director withhold this rule from the list of rules DEP proposes to file for public hearing/comment period in the coming week to give all interested parties a chance to participate in drafting the rule.

After discussion of this recommendation, Chairman Miano said he believes the best approach would be to continue with the filing of the proposed rule for public hearing, start the rule in the normal process and time frame, and in the meantime he would commit to putting together a work group of interested parties to discuss the rule. If DEP feels that more time is needed once the group begins their work on the rule, he will consider the possibility of either extending the comment period or filing for another public hearing. He said he will also decide in the near future whether DEP will file the rule as an "Emergency Rule" since HB 681 will become effective on June 11.

Council members also pointed out a typographical error in subdivision 3.9.a.3. of the rule relating to cross-references that will be corrected by DEP.

Barb Taylor and Mike Johnson, Office of Water Resources, briefed Council on the following rules:

- **47CSR57A - "Groundwater Protection Standards at Steam Electric Generating Facilities"**
- **47CSR26 - "Water Pollution Control Permit Fee Schedule"**
- **47CSR31 - "State Water Pollution Control Revolving Fund Program Rule"**

Barb described the proposed "new" rule relating to Groundwater Protection Standards at Steam Electric Generating Facilities. She noted that the rule is a result of a Notice of Intent filed on October 24, 1994, by the West Virginia Steam Electric Generation Industry, with the Director of DEP, in accordance with 47CSR57 to apply for a class variance for all West Virginia power stations and associated disposal sites. At that time, DEP provided AEP and AP with the

opportunity to conduct a four-year study to gather the necessary data to support their variance request. The objectives were met by assembling and reviewing data, estimating potential impacts to receptors, and performing an economic assessment impact analysis to the industry, commercial enterprises, and citizens at large if compliance with the Groundwater Protection Act were required without benefit of the variances. After review of the four-year study, the Director determined that granting this request for a variance at these locations would not pose adverse effects to human health or the environment. There are no human or environmental sensitive receptors between the coal storage areas or as ponds; therefore, it is unlikely there will be adverse affects. Barb gave each member a copy of the four-year study on which the Director made his determination.

Chairman Miano told Council that DEP is definitely willing to look at such cases where extensive research and study have been done by the regulated community to back up their findings before granting such variances, and believes DEP will see more studies like this in the future.

Barb next apprised the members on the proposed amendments of the Water Pollution Control Permit Fee Schedule. She stated that amendments are being proposed as a result of HB 2684, passed March 11, 1999, and effective ninety days from passage. The Director is required to implement an emergency rule to implement the fee schedule authorized by the amendments by July 1, 1999. This rule was filed as an "Emergency Rule" on June 7, 1999.

Mike Johnson, Office of Water Resources' Construction Assistance Office, briefed the Council on 47CSR31 - the Water Pollution Control Revolving Fund Program rule. The amendments to this rule are being proposed to allow the State Revolving Fund low interest terms to be extended from 20 years to 30 years for communities that qualify as "disadvantaged." There is only one other state in the country to receive such approval from EPA. Mike informed the Council that he was only recently made aware of this extension by EPA to extend the low interest loans from 20 to 30 years while attending a meeting out of state. This rule was filed as an "Emergency Rule" on May 24, 1999.

Council members unanimously agreed that Mike Johnson should be commended for gathering this information and proposing the amendment to the rule that will enable disadvantaged communities to immediately take steps toward constructing watershed projects that will provide affordable monthly sewer rates.

Open Discussion:

Chairman Miano and Council members expressed their compliments to the program offices for all their hard work, especially with the stakeholders process -- it is obvious a lot of hard work has gone into the process in order to make their efforts more productive.

Bill Raney asked a question relating to the "More or Less" Stringency statement that appears on the front of some DEP rules, but not on others, and voiced his concern if DEP is paying close attention to this, or if the same statement is appearing with all proposed rules. Carrie Chambers from the Director's Office explained that statement was once required to be included in the "General" section of each rule; however, it is now placed in the briefing document that is attached to each rule, and required by the Secretary of State's Office and the

Legislative Rule-Making Review Committee, before it is filed. She went on to explain that with the rush to get draft copies of the rules to Council members as soon as possible, some of the Briefing Documents had not been completed, but would be attached to all DEP rules before they are filed for public hearing. Chairman Miano went on to say it is his belief that all program offices are carefully scrutinizing each rule before that decision is made.

Chairman Miano thanked Council for taking time from their busy schedules to review the extensive list of DEP's proposed rules. He informed the Council that the minutes would be left open for comment until Wednesday, June 16, at which time the minutes will be attached to the rules and filed with the Secretary of State's Office and the Legislative Rule-Making Review Committee for notice of public hearing/comment period.

Before adjourning the meeting, the Council informed Chairman Miano that they would prefer beginning future meetings at 10:00 a.m., instead of the usual time of 1:00 p.m. The meeting was then adjourned at 3:30 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR4 "TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS"

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:

Cost changes are not anticipated to be incurred with the proposed amendments to this existing rule.

3. Objectives of these rules:

The proposed amendments to this rule will clarify the intent of the rule, update the content of the rule for consistency with currently available technology, and improve the effectiveness of the rule.

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 anticipated impact above that resulting from the current regulation and the policy and purpose of the West Virginia Code.

C. Economic Impact on Citizens/Public at Large.

Same as Above Item 4.B.

Date: 6/11/99

Signature of Agency Head or Authorized Representative

Karen G. Watson

Karen G. Watson, Attorney

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

SERIES 4
TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS

§45-4-1. General.

1.1 Scope. -- ~~Series 4 is designed~~ This rule is intended to prevent and control the discharge of pollutants into the open air which causes or contributes to an objectionable odor or odors.

1.2. Authority. -- W. Va. Code §22-5-1 et seq.

1.3. Filing Date. -- ~~August 28, 1967~~

1.4. Effective Date. -- ~~October 1, 1967~~

1.5. Former Rules -- This legislative rule amends 45CSR4 "To Prevent and Control the Discharge of Air Pollutants Into the Open Air which Causes or Contributes to an Objectionable Odor or Odors" which was filed on August 28, 1967, and which became effective October 1, 1967.

§45-4-2. Definitions.

2.1. "Air p~~P~~ollutants" means solids, liquids~~,~~ or gases which, if discharged into the air, ~~will~~ may result in a statutory air pollution.

~~2.2. "Air pollution", 'statutory air pollution' shall have the meaning ascribed to it in W. Va. Code §22-5-2.~~

~~2.7.~~2.2. "Duly Authorized Representative" means the Director or such other agent or employee of the Director ~~who by virtue of special training and/or experience is qualified to make determinations relative to this rule~~.

~~2.3. [Reserved]~~ 2.3. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. In addition, a malfunction shall not include economic loss caused by delays in production.

2.4. "Mobile Unit" means transportable analytical equipment for determining the chemical compound(s) and approximate concentration of the chemical compound(s) in ambient air samples, including, but not limited to, equipment affixed to a motorized vehicle.

~~2.6.~~2.5. "Objectionable Odor" means, in addition to odors generally recognized as being objectionable, an odor ~~shall be~~ which is deemed objectionable when in the opinion of a duly authorized representative ~~of the Director~~, based upon ~~his investigations or his~~ investigations, determinations ~~and~~ or complaint(s), such odor is objectionable.

~~2.5.~~2.6. "Odor" means a sensation resulting from stimulation of the human sense of smell.

2.7. "Odor Panel" means a group of at least five persons who have been approved by the Director based on their ability to judge odor intensity.

~~2.4.~~2.8. "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of

this or any other state or county, and any firm, partnership, or association of whatever nature.

2.9. "Repetitious" means an instance of repeating or being repeated.

2.10. "Statutory Air Pollution" means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

2.11. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W. Va. Code §§22-5-1 et seq.

§45-4-3. Objectionable Odor Prohibited.

3.1. No person shall cause, suffer, allow or permit the discharge of air pollutants which cause or contribute to an objectionable odor at any public or residential location ~~occupied by the public~~.

3.2. ~~The Barnebey-Cheney Scentometer or any other instrument, device, or technique designated by the Director may be used as a guide in the enforcement of the rule and may be used in the determination of the objectionability of an odor.~~ When determining if an objectionable odor has occurred, a duly authorized representative shall first make a reasonable effort to verbally contact the person alleged to be discharging air pollutants which cause or contribute to an objectionable odor.

3.3. When a person is found in violation of this rule by discharging an air pollutant or pollutants which causes or contributes to an objectionable odor, the person shall be notified in writing of such violation. Such notice shall include the need for developing and the deadline for submittal of proposed corrective measures or a control program. The Director shall determine if the corrective measures or control program is acceptable.

3.4. When the Director has reasonable cause to believe that a person or persons is causing or contributing to a repetitious objectionable odor, the Director may require the person or persons discharging or alleged to be discharging such air pollutants, to conduct related studies as approved by the Director, within a specified time period. Such studies may include, but not be limited to: source and ambient sampling and analysis to identify the specific chemical compound(s) which causes or contributes to an objectionable odor; use of a mobile unit to characterize the frequency of occurrence and approximate concentration of the odorous compound(s); analysis of air samples by an odor panel; air dispersion modeling studies; and evaluation of applicable control devices or control measures. The Director may conduct or contract with others to conduct these or other studies on an independent basis. The results of any such studies may be used by the Director to determine compliance with the provisions of this rule or to determine whether the corrective measures or control program required under subsection 3.3 should be approved or modified.

3.5. When applying for any permit for construction, modification or relocation of a stationary source or any source of air pollutants, the permit applicant shall provide information describing its intended means of compliance with subsection 3.1 or describing why the proposed construction, modification or relocation is not anticipated to create an objectionable odor.

3.6. Persons complying with any corrective measure or control program approved under this section shall be deemed to be in compliance with this rule with respect to those objectionable odors addressed by the corrective measures or control program, unless the Director notifies the person that other or additional measures are necessary to comply with subsection 3.1.

§45-4-4. Accidental and Other Infrequent Emissions, Reporting.

4.1. Accidental and other infrequent discharges which may cause or contribute to objectionable odor(s) at any public or residential location will be considered on an individual basis and shall be reported by the person responsible therefore to the Director ~~in the manner to be~~

~~prescribed by the Director~~ within a reasonable time after the person responsible has knowledge of such discharge.

~~§45-4-5. Notice of Violation.~~

~~5.1. No person shall be considered in violation of this rule unless notified that he is discharging an air pollutant or air pollutants which causes or contributes to an objectionable odor.~~

~~5.2. Notification as herein required shall be by registered or certified letter of notice sent to the person at his last known address which notice shall set forth the nature of the violation and require such person to submit a control program within such reasonable time as the Director shall specify.~~

~~5.3. The provisions of this section shall not apply to persons operating a control program approved pursuant to Section 6 of this rule.~~

§45-4-6~~5~~. Variance.

~~6.1. When a process or operation results in the discharge of an air pollutant or pollutants which causes or contributes to an objectionable odor, an acceptable control program shall be developed and offered to the Director by the person responsible for the discharge of such air pollutant or pollutants. This control program shall be submitted in the manner prescribed by the Director and within such time as shall be fixed by the Director. If such a control program has been approved by the Director by the issuance of a variance, the person responsible for said discharge shall not be considered to be in violation of this rule in connection with said discharge so long as the program is observed.~~

5.1. Due to an unavoidable malfunction of equipment, the discharge of air pollutants which causes or contributes to an objectionable odor may be permitted by the Director for periods not to exceed ten (10) days under specific conditions. Any person who desires such a variance shall make application to the Director in the manner prescribed by the Director.

~~6.2. The Director may permit, under emergency circumstances, the discharge of air pollutants which causes or contributes to an objectionable odor under specific conditions for specific time periods. Any person who desires such a variance shall make application to the Director in the manner prescribed by the Director.~~

§45-4-~~7~~6. Exemptions.

~~7.1~~ 6.1. This rule shall not apply to the following sources of objectionable odor until such time as feasible control methods are developed:

~~7.1a~~ 6.1.a. Mobile ~~i~~internal combustion engines.

~~7.1b~~ 6.1.b. Normal and necessary operations associated with the production of agricultural products grown on the premises or livestock, dogs, cats; and poultry grown on the premises.

45-4-7. Enforcement.

7.1. Notwithstanding any other provisions in this rule, the Director may take any and all enforcement actions authorized under the Code for a violation of this rule, including, but not limited to, requiring the immediate cessation or abatement of the discharge causing or contributing to the objectionable odor.

§45-4-8. Inconsistency Between Rules.

8.1. In the event of any inconsistency between this rule and any other existing rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

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

ORIGINAL

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 4 **"To Prevent and Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"**

Transcript of proceedings had at a public hearing in the above-styled matter for the West Virginia Division of Environmental Protection, Office of Air Quality at the Conference Room, 1558 Washington Street, East, Charleston, West Virginia, 25305, commencing at 6:15 p.m. on the 19th day of July 1999, pursuant to notice.

P R O C E E D I N G S

MS. CHANDLER: Good evening. This public hearing will now come to order on this 19th day of July, 1999 at the West Virginia Division of Environmental Protection, Office of Air Quality's Conference Room located at 1558 Washington Street, East, Charleston, West Virginia.

The purpose of the public hearing is to receive comments on the proposed rules filed in the Secretary of State's Office on June 16, 1999 and noticed in the State Register on June 18, 1999. The proposed legislative rules are 45 CSR 1, 45 CSR 2, 45 CSR 3, 45 CSR 4, 45 CSR 5, 45 CSR 6, 45 CSR 7, 45 CSR 10, 45 CSR 12, 45 CSR 16, 45 CSR 17, 45 CSR 18, 45 CSR 23, 45 CSR 25, 45 CSR 33 and 45 CSR 34. The rules were noticed in a Class I legal advertisement in both The Charleston Daily Mail and The Charleston Gazette, and notice was also sent to various individuals and organizations.

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

My name is Jeanne Chandler of the Public Information Office of the West Virginia Division of Environmental Protection. I will be the moderator for these proceedings.

In order to obtain separate transcripts for each of the rules, the hearing procedure this evening will be to introduce each rule individually, allow time for oral comment and close the hearing for that particular rule. Written comments for any rule may be submitted at the end of this public hearing tonight. For those of you wishing to make oral comments, a sign-up sheet was provided and sign up now if you haven't already done so. Please limit your comments to five minutes. The comment period has been extended until July 28th until 5:00 p.m. Written comments may be sent to the attention of Edward L. Kropp, Chief, Office of Air Quality, 1558 Washington Street, East, Charleston, 25311. Comments will not be accepted by e-mail. Your comments will be made a part of the rule-making record.

The court reporter is Ms. Paula J. Moore. She's with Q & A Court Reporters, Incorporated. If anyone desires a transcript of this proceeding, please contact Ms. Moore at 937-2555.

The purpose of this public hearing is to accept comment on 45 CSR 4, "To Prevent and Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors." This rule amends the existing rule which was effective on October 1,

1967. The rule is intended to prevent and control the discharge of pollutants into the open air which cause or contributes to an objectional odor or odors.

Amendments to this rule are needed to clarify the intent of the rule, update the content of the rule for consistency with currently available technology and to improve the effectiveness of this rule.

The revisions proposed herein were initiated by the Office of Air Quality as part of a broad effort to modernize and streamline all of the Agency rules. The current revision process is also intended to update and harmonize this rule with other rules of the Office of Air Quality.

The proposed revisions are the result of a thorough review in a stakeholder process that was inclusive of the Office of Air Quality, representatives of the regulated community, concerned citizens and the environmental community.

Upon authorization and promulgation of revisions to 45 CSR 4, the Office of Air Quality not will seek federal approval by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Clean Air Act.

The floor is now open for public comment.

MR. KOTCON: My name is James Kotcon. I am currently serving as vice chair of the Monongahela Group of the West Virginia Sierra Club. I am speaking specifically with regard to 45 CSR 4, the odor control rule.

Two issues in that rule, to me, seem to warrant some additional changes or consideration by the Agency, specifically the provisions for a variance, Section 5. Section 5.1 states that, "If there is an unavoidable malfunction of equipment which causes or contributes to an objectional odor, the director may issue a variance for a period not to exceed ten days. Any person who wants such a variance should make application to the director."

This basically says to me that if I think that some day I might have a breakdown, I can apply to the director in anticipation of an unavoidable breakdown and, therefore, be waived from this particular rule. To me, that's a fairly non-sensical approach, because the definition of an "unavoidable breakdown" or "unavoidable malfunction" is something that should, at least, be unanticipated. If you don't have an unavoidable malfunction of equipment, you would never be applying for the variance in the first place. So my recommendation would be to delete all of that Section 5 language.

There is some similar language in 45 CSR 2, Section 9.3(b) that deals with procedures for variances where there's an unavoidable exceedance of whatever the appropriate standard is. That's the particulate rule. That language in 9.3(b) of 45 CSR 2 might be an improvement on the existing language if you feel that a variance procedure is critical. Simply substitute the appropriate language for "odors" rather than "particulates."

But, again, in an odor control rule, I'm not sure why a variance would ever be necessary. So my recommendation would be to delete that procedure entirely, because if it's an unavoidable breakdown, you wouldn't be applying for a variance anyway.

The second comment is in Section 7 of that rule dealing with enforcement. I'm concerned that that language is extremely vague and needs to be a little bit more specific. My concern is that if my neighbor decided to dump sewage sludge in my backyard and thereby deprive me from the enjoyment of my backyard on some summer evening, such as we're having today, that this language really does not direct anyone to do much of anyone. Alternatively, it could direct and empower the director to do just about anything.

Something a little more specific that specific when an immediate cessation would be needed, what kind of equipment could be enforced, any penalty that might be appropriate, I think would give everyone a little more clear direction as to how to enforce those kinds of things.

I use that sewage sludge example because it's not just a hypothetical example. It did happen several years ago in the northern panhandle where a fairly large facility brought in something on the order of 60,000 tons a month of sewage sludge from New York City and was dumping it in their backyard. They happened to be calling it a composting facility, but the odor was exceptional, wide-ranging, covering a large neighborhood. There was very little under the old rule that would allow the director to do enforcement. My concern is that this new rule wouldn't do a bit more. Thank you.

MS. CHANDLER: Thank you, Mr. Kotcon. Any additional comments on 45 CSR 4? (No response.) There being nothing further, this public hearing for 45 CSR 4 is concluded.

(WHEREUPON, the public hearing was concluded at 6:20 p.m.)

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, the undersigned, Paula J. Moore, a Certified Court Reporter and Notary Public 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 27th day of July 1999.

Paula J. Moore

Certified Court Reporter
Notary Public

My commission expires November 12, 2006.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
PAULA J. MOORE
223 NASH LANE
BUFFALO, WV 25033
My Commission Expires November 12, 2006

Division of **E**nvironmental **P**rotection

6:00 pm

Public Hearing: OAQ Legislative Rules - 2000 Session **Time/Date:** July 19, 1999

45CSR4

	NAME	ADDRESS	COMMENT YES	COMMENT NO
1.	Sam Gastop Lewis - LWV	4406 Venable Ave SE		
2.	Jon D Jarrell	HC 80 Box 26A Gordon WV		
3.	Bill Hauer	HC 65 Box 42-A Lookout WV		
4.	Fred Durham	1615 Washington St East		✓
5.	Ken Ward	Charleston Gazette 1001 Virginia St, E, Chas		✓
6.	Dan Miller	WVMEA 1624 Kanawha Blvd E, Charleston, WV 25311		
7.	Laura Ciancek	WV DEP OAQ 1558 Washington St E Charleston WV		✓
8.	Earl Dillingsley	"		✓
9.	Jesse Atkins	"		✓
10.	Robert Keatley	"		✓
11.	Karen Watson	" 1615 Washington St. E, Chas 25311		✓
12.	James Kotcon	412 Tyrone-Avery Road, Morgantown, WV 26505	✓	
13.	Darrell Bollier	PO Box 68 Washington, WV 26180 GE Plastics		✓
14.	Dan Nixon	WVDEP EAD 10 Mattinkin Rd Nitro 25143		
15.	John Benedict	WVDEP OAQ Charleston		✓

Division of Environmental Protection

6:00 pm

Public Hearing: OAQ Legislative Rules - 2000 Session **Time/Date:** July 19, 1999

45CSR 4

	NAME	ADDRESS	COMMENT YES	COMMENT NO
1.	Jim Mezzanova	Box 144 Craigsley, WV 24931		
2.	Joseph Robert	Box 66 Chuttown WV 24931		
3.	Rick Wilson	PO Box 190 Clarksburg, WV 26302		X
4.	Kathy G. Beckett	PO Box 553, Charleston, WV 25322	X	
5.	Tim Mallan	301 Virginia St. E. Charleston, WV 25327	X	
6.	[illegible]	[illegible] WV 26201		X
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

4406 Venable Ave SE
Charleston, WV 25304
July 28, 1999

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

Dear Mr. Kropp;

The following comments are in regard to the package of air quality proposed rules. While I represented the League of Women Voters in the stakeholder process, they are not the final or official word of the League, but are my own.

Having read all the proposed rules in one sitting, I am struck first by the amount of discretion given to the Director. I recognize that discretion and judgement are necessary to the effective enforcement of air quality regulations, but in 45CSR 3, section 5.4, the director has discretion to revoke the operating permit of a hot mix asphalt plant that did not maintain the requirements of the rule. Since the requirements are basic--no particulates beyond a certain standard, I believe that the rule should read, "shall revoke, unless good cause is shown by the permitee". Similar language should be used in the equivalent sections throughout this regulatory package. Giving wide latitude to the Director could provide a legal defense to favoritism, should a Director be so inclined.

I am similarly concerned about the lack of deadlines throughout the proposed rules. While it is clearly inappropriate to delineate rigid timelines, it is appropriate to expect that the agency will act expeditiously in its contacts with the regulated community and the public. It would strengthen the rules if such language was placed throughout the rules package where appropriate.

The process used by the Office of Air Quality in revising the rules is excellent. Bringing together the stakeholders to work together, and come to a common understanding, is a process that should be duplicated, not only within the Divisions of Environmental Protection, but throughout state government. I hope that as additional air quality rules are revised that the same process will be used. The rules are indeed improved by this process. I do support the proposed rule revisions and trust that they will be approved by both the Legislature and the EPA.

Thank you for making it possible for me and other citizens to participate in this important project. Inclusiveness made for a better product than earlier rule writing procedures.

Sincerely

Conni Gratop Lewis

Conni Gratop Lewis

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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

July 1, 1999

Dear Skipp:

On June 28, 1999, we received your Notice of Public Hearing and Public Comment Period as well as copies of the proposed revisions to 16 rules which your office is proposing to adopt, effective the spring of 2000. Of these 16 proposed rules, we have determined that 14 of them may be impacted by current federal requirements.. Therefore, we wish to review these proposed rules and provide your agency with any comments we may have for the public record. This allows your agency to make any agreed upon revisions to the proposed rules pursuant to our comments prior to their formal adoption. This would pave the way for expeditious approvals of these revised rules by EPA at the time of formal submittal.

However, given that we would have had only 14 working days until your scheduled date to close the public record, our office will not have time to perform the comprehensive review we normally provide to your agency. Therefore, I am requesting an extension of the date by which comments may entered into the public record. If you could provide a 30-day extension we would be most appreciative, however, even a 15-day extension would be helpful. EPA would much prefer to identify any concerns we might have to your office while the State regulations are at the proposal stage, and work with you to resolve these concerns before West Virginia formally adopts and submits these regulations for federal approval.

I know you share my belief that our agencies should work together to avoid disapprovals and the uncertainties they pose to the regulated community and the public. Please let us know your decision as soon as possible by having your staff contact Harold Frankford at 215 814-2108.

Sincerely,

Marcia L. Spink, Associate Director
Office of Air Programs
Air Protection Division

Celebrating 25 Years of Environmental Progress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Date: 7/1/99

To	Skip Kropp
Office	West Virginia DEQ, Office of Air Quality
Phone Number	304/558-2496
Fax Number	304/558-3287
Subject	Request for Extension of Time to Submit Comments
From	Marcia L. Spink EPA PHONE: (215) 814-2104 FAX: (215) 814-2124

NUMBER OF PAGES INCLUDING COVER SHEET 2

ORIGINAL TO BE SENT: Yes ____ No ____

MESSAGE: Request for extension of time to submit comments on West Virginia proposed air quality rules.

DEGEN Tammy Karen - Bell

PAGE 01 Karen Watson

TOM DEGEN

P.O. Box 83 • Chloe, WV 25235 • phone/fax (304) 655-8651 • TDegen@wvwise.org

FAX COVER SHEET

To: Edward Kropp, Chief
Office of Air Quality
558-3287

From: Tom Degen

Pages (Including Cover) 20 Date 7/28, 1999

If You Do Not Receive All Pages, Please Call 655-8651

~~Hard Copy to Follow~~

THANK YOU

TOM DEGEN

P.O. Box 83 • Chloe, WV 25235 • phone/fax (304) 655-8651 • TDegen@wvwise.org

Date: July 28, 1999

To: Edward L. Kropp, Chief

Re: Comments on proposed rule 45CSR4 To Prevent and Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors.

You are probably aware that residents and businesses in the vicinity of the Brooke County composting operation at Pasquale Mascaro's Brooke County landfill have had tremendous problems with objectionable odors from that facility. This rule, 45CSR4 proved to be completely inadequate in addressing their problem. It was the ineffectiveness of this rule that resulted in the common law case [Civil Action No. 96-C-11] that shut the facility down by court order. The facility has been allowed to operate since that time because of an agreed order that implements the latest odor control technology protocols.

The citizen outrage expressed at the decision by the legislature to "grandfather" the Brooke County composting facility into the 1998 re-authorization of the solid waste laws resulted in §22-15-20(q), which instructed the DEP to develop rules that would effectively regulate odor problems at sewage sludge processing facilities.

The Office of Air Quality knows of the case, the agreed order, the odor control technology protocols currently in use at that facility, the Massachusetts rule from which they were developed, and the rationale behind §22-15-20(q). This case has consolidated all the information that the DEP needs to develop an odor rule that will protect the public while allowing large composting operations to function.

It is remarkable that the DEP chooses to ignore the body of knowledge accumulated during this case and instead insert a few changes into 45CSR4 that do not effectively correct the flawed approach to addressing odors that have been in the rule for thirty years, such as the notion that odors are not objectionable until a representative of the DEP deems them to be so (45-4-2.5), and that persons complying with corrective measures are deemed to be in compliance even though odors may still be occurring. (45-4-3.4)

I am attaching to these comments a copy of the draft odor policy from the State of Massachusetts. The Massachusetts rule employs the latest information on odor management and if implemented, can enable sewage sludge composting facilities and communities to co-exist. I hope that the agency will take this information into consideration and promulgate an effective odor rule, as was intended by the

Legislature in §22-15-20(q).

I appreciate the opportunity to comment on this rule.

Thank you,

Tom Degen, representing Calhoun County Solid Waste Authority

attachments: Commonwealth of Massachusetts Draft Odor Policy

cc: Senator Jeffrey Kessler
Delegate Mark Hunt, Co-Chair LRMRC
Rex Burford, Attorney General's Office
Professor Robert Diener, P.E. WVU
Elizabeth Sampson, President West Virginia Environmental Council
Norm Steenstra, WV Citizens Action Group
Dr. Jim Kotcon
Delegate Mary Pearl Compton, LRMRC
Delegate Larry Linch, LRMRC
Senator Herb Snyder, LRMRC
Ed Zagula
Don Robinson, Brooke Co. Solid Waste Authority
Shirley Mullet, Wetzel County Solid Waste Authority

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON MA 02108 (617) 292-5500

TILLIAM F. WELD
overnor

IGEO PAUL CELLUCCI
. Governor

TRUDY COXE
Secretary

DAVID B. STRUHS
Commissioner

COMPOST FACILITY REGULATIONS: PUBLIC COMMENT DRAFT

DOCUMENT # 2

DRAFT ODOR POLICY

January 1996

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON MA 02108 (617) 292-5500

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Lt. Governor

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Secretary

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COMPOST FACILITY REGULATIONS: PUBLIC COMMENT DRAFT

DOCUMENT # 2

DRAFT ODOR POLICY

January 1996

Draft Guidance and Policy for the Evaluation of Odors at Composting Facilities

INTRODUCTION

The Massachusetts Department of Environmental Protection's (the "Department's) Integrated Waste Management Strategy applies to all waste streams regulated by the Department. The hierarchy of this strategy is to first reduce the generation of wastes. Once a waste is unavoidably generated, the strategy encourages attempts to productively reuse or recycle this waste material. The last resort is the direct disposal of waste materials without any reuse/ recycling or treatment.

Composting of organic waste materials is an important process that allows for the effective recycling of these biodegradable waste materials. Most of the composting experience in Massachusetts has been with domestic wastewater sludge (biosolids) and yard waste, however there is growing local interest in composting fractions of the municipal solid waste stream, agricultural and food-processing wastes. Composting is not a new technology. Composting has been practiced for centuries and has been considered a viable sludge management option for 15 - 20 years (or longer).

While there have been many municipal sludge success stories across the country there have also been some notable failures. Unfortunately, in Massachusetts, our experiences have included many in the "failure" category rather than in the "success category". The nature of the organic material being handled and the proximity of many composting operations to local residents make sludge composting a likely candidate for odor problems.

Odor problems can be very technically complex to control and costly to manage if not properly considered during the project planning and design phases for facilities.

The objective in permitting new composting facilities is to assure that reasonable steps are taken proactively to prevent off-site nuisance odors from occurring. Based on the Department's experience with existing operations, it is prudent to develop sound odor management strategies in the planning and design phases of the project. Costs for controls are usually less costly if done as part of the initial project design, rather than as "add-ons" once the project is up and operating.

This document was prepared specifically for operations which involve the composting of biosolids (sewage sludge) and municipal solid waste. However, the general methodology and procedures can be applied to the evaluation of other sources of odors on a case-by-case basis. The Department generally uses individual compounds for evaluating non-composting wastewater treatment plant odors.

DRAFT JANUARY 3, 1996 FOR DISCUSSION ONLY

COMPOSTING ODOR POLICY

APPLICABILITY: This policy was prepared primarily for biosolids (sludge) and municipal (non-yard waste) solid waste composting facilities but the Department may use the policy on a case by case basis for yard waste composting odors and other odors as appropriate.

The intent of this document is to provide consistency and guidance in the complex area of odor control and evaluation at composting operations. Nothing contained herein should be construed as prohibiting further requirements or review as deemed appropriate on a case by case basis. Further, nothing in this policy should be construed as allowing a condition of air pollution (odor nuisance) as defined in 310 CMR 7.00 "Air Pollution Control Regulations". Additional methods and guidelines are outlined in the "**Supplemental Guidance Document**", attached.

1. **PROPOSED (NEW) SOURCES:** Experience has shown that the need for odor control is the rule rather than the exception at biosolids and municipal solid waste composting facilities. Therefore, except as outlined in item #4 below, proposed (new) non-yard waste composting facilities must:

   A. Include air pollution control for all emissions from active composting operations and analyze whether other sources (general building ventilation air, mixing area, curing piles, etc.) need controls. Any odor control treatment systems should be designed consistent with the attached "Supplemental Document". The level of control, BACT, shall include all reasonable practices to reduce/minimize odors and add-on controls as determined by a BACT analysis (see definition of BACT, item #3).

   B. Demonstrate through Department approved air dispersion modeling that any odors emitted will not result in a predicted off-site nuisance odor condition. All composting odors, all odors from non-composting operations at the site (i.e. wastewater treatment unit processes) that are generated at sufficient levels to cause off-site nuisance conditions and all residual odors remaining after controls should be included as inputs to the model.

C. Prepare and submit to the Department for review and approval an odor management plan that incorporates Best Management Practices (BMPs). The odor management plan should include at a minimum the following:

i. a plan that details specific operational procedures that shall be used to minimize odor generation,

ii. a contingency plan for facility upset and/or nuisance conditions,

iii. a complaint response program and a proposal for a community outreach/involvement program.

2. **EXISTING SOURCE ODOR PROBLEMS:** Existing facilities that the Department determines are creating or contributing to an off-site nuisance condition should:

A. Identify and quantify all sources of odor at the site, including odors from non-composting activities;

B. Prepare and submit to the Department (within the time frame determined by the Department's regional office) a compliance plan to remedy the existing odor problems that includes a schedule for initiation of control measures, including, but not limited to:

i. Optimization of operating and maintenance (O&M) procedures to reduce the generation of odors; and

ii. An air pollution control/treatment system for, at a minimum, all emissions from active composting operations. In addition, an evaluation of the need for an odor treatment/control system shall be conducted for all other areas such as mixing, curing and storage areas.

iii. Evaluation of all other odor control options and their effectiveness/applicability to the source.

iv. Demonstration of control plan effectiveness through the Department approved air dispersion modeling (see item #1B).

C. Upon the Department approval of the compliance plan, implement all steps of the plan.

DRAFT JANUARY 3, 1996 FOR DISCUSSION ONLY

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ii. An air pollution control/treatment system for, at a minimum, all emissions from active composting operations. In addition, an evaluation of the need for an odor treatment/control system shall be conducted for all other areas such as mixing, curing and storage areas.

iii. Evaluation of all other odor control options and their effectiveness/applicability to the source.

iv. Demonstration of control plan effectiveness through the Department approved air dispersion modeling (see item #1B).

C. Upon the Department approval of the compliance plan, implement all steps of the plan.

3. **BACT (Best Available Control Technology)** is an emission limit based on the maximum degree of reduction of an air contaminant emitted from a facility which the Department, on a case-by-case basis taking into account energy, environmental, economic impacts and other costs, determines is achievable through application of production processes and available methods, systems and techniques for control of such contaminants.

A BACT analysis (determining BACT) shall be conducted in a "top-down" manner. **All** control methods and devices possible must be considered; elimination of specific strategies must be documented on technical, economic or other considerations. Control methods currently and successfully in long-term use at other similar facilities will automatically be considered technically feasible unless substantial documentation to the contrary is provided.

The **minimum** level of air pollution control that will be considered BACT is that level **which will not result in a condition of nuisance odors off-site**. This criteriaon must be met **regardless** of the cost such control would entail.

4. **EXEMPTIONS:** The Department recognizes that some sources may not warrant add-on air pollution/odor control devices for reasons such as remote site location. However, the Department has determined that most non-yard waste composting operations do need controls; a position which has been substantiated by numerous experiences with existing facilities. The Department will consider, on a case by case basis, exemptions from the add-on control requirement for new facilities, item #1A, (but not for existing facilities with odor problems), if the proponent can demonstrate a condition of odor will not occur due to the size and location of the facility. Such exemptions will not be considered for facilities in urban areas or very close to residential areas in rural areas. A detailed dispersion modeling analysis and other supporting documentation must be submitted to the Department as part of any such exemption request.

Facilities that receive such an exemption must submit to the Department, for review and approval, a detailed contingency plan. The contingency plan must include a written agreement adequate to ensure that an available alternative disposal, handling, or composting facility exists should odorous conditions necessitate the routing of the compostable material to an alternate facility. The contingency plan must also detail what operation and maintenance steps will be taken to minimize odors at the facility applying for the exemption should nuisance conditions occur.

DRAFT JANUARY 3, 1996 FOR DISCUSSION ONLY

5. **CRITERIA FOR APPROVAL:** The design of proposed sources, as well as proposed modifications to a source, should be evaluated for an impact of five (5) Dilutions to Thresholds (D/T) or less (see Section 7 below and also attached Supplemental Guidance Document, Section II for the definition of D/T), as predicted by the Department approved air dispersion modeling. (Impacts should be evaluated at the property boundary or at the point of maximum impact beyond the property boundary, whichever results in a higher predicted impact, unless otherwise approved in writing by the Department.) In some cases the Department may agree to allow use of the most sensitive receptor as the design point, even though this may result in a less stringent requirement than use of the property boundary, if requested by the applicant and if adequate justification is submitted to indicate that the both the existing and future land use in between the receptor and facility property line supports such a request. 5 D/T should to be used as a design standard only in accordance with Section #6 below.

The applicant should demonstrate compliance with a design standard (as predicted at the property boundary or at the point of maximum impact beyond the property boundary, which ever results in a higher predicted impact) less than 5 D/T at sites for which the Regional Director of the Department's regional office determines are appropriate due to local meteorology and topography, previous history of chronic odors or intensity/density of local development.

Use of 5 D/T as a minimum design standard in no case exempts a facility from having to operate in such a way as to prevent nuisance conditions from occurring off-site. The facility operator is responsible for ensuring that nuisance conditions do not occur off-site (beyond the property line) regardless of the D/T level designed for and regardless of the results of compliance testing.

For existing sources, as well as proposed and modified sources after they are in operation, a condition of odor will be determined by Department personnel (or by local agencies as allowed by the Department's regulation 310 CMR 7.52) during actual site visits and other pertinent information (such as complaints) as well as by compliance testing results. Modeling results which represent conditions at a particular point in time are not in of themselves sufficient to prove that an odor does not exist at an operating facility.

6. **EMISSION LIMITATIONS:** The emission rates resulting from the BACT analysis and used in the modeling to demonstrate compliance with the design criteria of 5 D/T, will become the facility's allowable emission rate. A composting facility may have more than one emissions limit if more than one odor source exists at the facility. Potential sources include

emissions from treatment systems such as biofilters and chemical scrubbers; areas that are vented without treatment (through fans and stacks or through building ventilation systems) and outside piles and storage areas.

7. **TESTING:** All new non-yard waste composting sources and associated air pollution/odor control equipment should undergo compliance testing either twice per year or at a frequency that the Department determines is sufficient to demonstrate compliance with odor emission limits and/or control efficiencies as contained in any Department approval for the source. Any existing composting operations that the Department determines in writing is likely to be generating off-site odor nuisance conditions may also be required to undergo compliance testing.

Compliance testing should consist of odor panel analysis of samples taken at the points of generation and the analysis should be conducted in accordance with ASTM Method 679-91 unless otherwise approved by the Department. Sampling and analysis should be conducted in accordance with the attached "Supplemental Document". Samples should be taken from the point(s) of generation. In no case should sample storage time exceed 24 hours prior to odor analysis.

If the compliance testing indicates an exceedance of the "back-calculated" emissions limit, the composting facility should at a minimum initiate a preliminary investigation into the reasons for the exceedances. The preliminary investigation should include at a minimum an evaluation of whether odor control system and aeration system components are operating correctly. In addition, a scope of work for tasks related to a more detailed and comprehensive evaluation of the reasons for the exceedances should be submitted (with the preliminary investigation) to the Department for review and approval as soon as possible but in no case later than 30 days from the facility's receipt of the compliance testing results. The scope of work should include an evaluation of whether O&M procedures can be modified to minimize odor generation rates at the facility.

8. **DETERMINATION OF NUISANCE:** Limited testing can not cover all operating conditions and odor level testing includes some inherent variability. Therefore, the Department will also use site visits and will consider other pertinent information (complaints, etc.) when determining whether odor/nuisance conditions exist off-site regardless of emissions compliance test results. The operator should complete a standard form (to be prepared by the Department) for all odor complaints received by the composting facility. Copies of the completed form should be sent to the Department, the local Board of Health, and the complainant.

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Supplemental Guidance Document

The following document discusses in greater detail the method of analysis and other guidelines to be used in evaluating odors. It describes:

I. Odor Generating Operations
II. General Odor Analysis Procedures
III. Modeling Protocol
IV. Process Operation and Maintenance
V. Air Pollution Control Guidelines
VI. Emission Estimates

Note that much of this guidance is subject to change as new information becomes available to the Department. This document should be viewed as guidance, allowing for deviation where substantial documentation is provided for an alternative analysis.

I. ODOR GENERATING OPERATIONS

There are many potential odor sources at a compost facility. When conducting an analysis of odor, the focus must be on individual areas and unit operations. An "overall" plant odor analysis is not acceptable except in demonstration of total off-site odor impacts. Areas are often overlooked and only those areas **perceived** as major odor sources are analyzed. To avoid overlooking potentially important contributing area sources, each source of odor must be evaluated and ranked according to its strength and size.

Operations to be specifically analyzed are any areas with potential odor generation, including but not limited to the following potential sources (wastewater treatment plant operations are included because they are often located on or near the same site as composting operations):

Wastewater Treatment Plants	Head Works/Influent Structure
	Grit Channels
	Septage Receiving/Treatment/Handling
	Aeration Basins
	Primary Clarifiers
	Secondary Clarifiers
	Sludge Thickening and Dewatering
	Sludge Processing
	Sludge Storage
	Sludge Transfer Areas
Composting	Materials Receiving Areas
	Pre-composting Processing/Storage
	Active Composting
	Curing
	Finished Product Storage

II. GENERAL ODOR ANALYSIS PROCEDURES

There are two basic methods of defining odor:

1. By specific compound, for example, hydrogen sulfide. Many studies have been conducted and results published on the odor threshold of various compounds. The available information/ studies on the detection thresholds for individual compounds contain a wide range of detection limits (with one to two orders of magnitude difference for some common odorous compounds).

2. By an overall rating of the odor without regard to specific chemicals. The odor from composting, for example, can be derived from hundreds of odorous compounds. The quantifying of an overall odor is sometimes given by the number of dilutions of clean, odor-free air (plus the one volume of odorous air) necessary to reduce the odor to a level at which 50% of a particular panel can detect any odor. Thus, a Dilution to Threshold (D/T) of 5 indicates that any given volume of the odorous air must be diluted with odor-free air of 4 times the volume of odorous air in order to dilute the odorous sample to a level at which 50% of an odor panel can detect any odor from the diluted sample.

Odor can also be rated in terms of its intensity, usually referenced against butanol intensity. D/T and "odor intensity" levels are often reported together since both are usually rated as part of odor panel evaluations. There are advantages and disadvantages to each of these methods but the one common weakness is the fact that the ability to detect odors by people is subject to considerable variability. This is true for both compound specific odor threshold levels and evaluation of overall odors. In addition, odor intensity as measured by butanol intensity (as opposed to D/T levels) is not readily modeled in dispersion models.

Issues relevant to both methods are discussed in more detail below (Sections A and B). Their use/applicability is discussed in Section C below.

A. Specific Compounds

Odor causing compounds are produced during incomplete microbial oxidation of organic materials (principally carbohydrates and proteins). Under anaerobic conditions, (a) carbohydrates break down into odorous compounds such as alcohols, aldehydes, esters, and organic acids such as butyric acid and (b) proteins produce ammonia and amines, and mercaptans and reduced sulfur compounds.

In reviewing current literature, it was determined that certain odor causing compounds are commonly detected during sampling and analysis of emissions from biosolids processing operations. The specific compounds vary depending upon the exact process and levels can vary dramatically from facility to facility. The specific chemicals depend upon the number and type of operations existing at the facility.

The following lists the more common odorous compounds detected by type of operation.

Wastewater Treatment Plant (primary and secondary treatment)	Ammonia and Amines Hydrogen Sulfide Mercaptans
Sludge Composting	Ammonia Dimethyl Disulfide Dimethyl Sulfide Fatty Acids Mercaptans

The following additional compounds also have been identified. However, insufficient information exists at this time to classify them as a cause of nuisance problems. These compounds are often found as a result of wood chip and other bulking agent decomposition.

Sludge Composting	Limonene and other terpene compounds

Odor levels for compounds are divided into several classes including detection (the level at which an odor is first detected) and recognition (the level at which the odor can be identified as a specific compound) levels. Within these classes there are also many divisions such as the 50% and 100% recognition levels (i.e. the level at which 50% and 100% of the people recognize the odor). Therefore, for any one compound, there may be many different values reported for odor thresholds. Varying individual perception thresholds of odor even complicates the issue further.

In the opinion of the Department, the determination of a nuisance condition resulting from composting odors should not, in the final analysis, be based on specific chemical thresholds. Because of synergistic effects, different levels of sensitivity to odors, and limitations on analytical methods and other factors a nuisance may exist even when specific compounds are found to be below any established thresholds. Nuisance determination should always be a case by case judgement.

B. Overall Odor Rating (Odor Panel Testing)

The overall method of odor analysis does not identify individual compounds, but uses a total of all odor detected. Thus, synergistic effects and odors from compounds too obscure or dilute to analytically measure are accounted for in the analysis. The most common overall method is the use of odor panels to determine the Dilutions to Threshold (D/T) level as previously described.

A review of regulations from other states indicates that several states have ambient odor limits based on D/T levels of 7 - 8 D/T. California has a 5 D/T ambient limit (for at least some portions of the state) as well as limits on D/T levels (and certain specific compounds) for emissions from stacks. Agricultural operations are usually exempted by states but one state sets an ambient limit of 127 D/T for such operations. Other literature references cite a D/T of 5 - 10 as the level at which complaints can begin to be expected at many sites.

The Odor Policy Work Group (that includes members from a variety of Divisions and Bureaus within the Department) has met with consultants involved in the evaluation of new composting facilities in the New England area, conducted a phone survey of composting operations around the country, reviewed studies and articles in the literature, and evaluated applicable dispersion modeling results. Based on this review, the Odor Policy Work Group has proposed a design standard of a maximum modeled impact of 5 D/T at the property line (or most sensitive receptor if approved by the Department) to be used as a minimum design standard for emissions from odor control systems at most properly operated composting operations.

The Department may however require as part of facility permitting that the applicant demonstrate compliance with a design standard (as predicted at the property line and/or most sensitive receptor) less than 5 D/T at sites for which the Regional Director of the Department's regional office determines are appropriate due to local meteorology and topography, previous history of chronic odors or intensity/density of local development.

Even scrubbers and biofilters (as well as storage piles) at properly operated facilities emit residual odors that can be detected in odor panel testing. For this reason the Department is concerned that use of a mandatory design criteria more stringent than 5 D/T for all facilities may result in many properly operated composting facilities not being allowed to attempt to demonstrate that the facility can operate without creating off-site nuisance conditions. Such an effect could have a serious impact on the feasibility of composting operations in Massachusetts.

Use of 5 D/T as a minimum design standard in no case exempts a facility from having to operate in such a way as to prevent nuisance conditions from occurring off-site. The facility operator is responsible for ensuring that nuisance conditions do not occur off-site (beyond the property line) regardless of the D/T level designed for and regardless of the results of compliance testing.

C. Applicability to Design

After review of the advantages of the different approaches to odor analysis and the inherent limitations of each, a combination of methods is prescribed. Specifically:

1. Specific chemicals can be used for air pollution treatment efficiency evaluation and should be considered by the facility operator as a tool to evaluate design performance as appropriate. In such uses, individual chemicals measured by existing analytical procedures can help evaluate the performance of control equipment.

2. Overall odor is to be used for total off-site impacts (demonstration of odor impact). As such, individual sources (stacks, biofilters, outside operations, etc.) that generate significant odor emissions will also have an overall odor level performance emissions standard associated with them.

D. Odor Panel Testing Procedures

1. Odor samples should be collected into gas sampling bags made of Tedlar unless otherwise approved by the Department. Odor samples should be collected using a sampling line made of an odor-free, chemically inert and non-reactive material.

2. The sampling bag should be filled purged with the sample at least once prior to collecting the sample to precondition the sampling line and the interior walls of the sampling bag. The gas should be transferred directly into the sampling bag without going through any potential sources of contamination such as pumps. Samples should be maintained at ambient temperature and contact with direct sunlight should be avoided. Under no circumstances should sample storage exceed 24 hours.

3. **Air flow should be regulated at a minimum of 3 liters per minute per sniff port unless otherwise approved in writing by the Department.** Therefore, total air flow rate to the olfactometer (that consists of three ports) would be a minimum of 9 liters per minute unless otherwise approved by the Department in writing. During odor panel testing each diluted sample must be presented to the sample with two odor-free blanks (for statistical validation purposes) by using three sniff ports.

4. Odor panels shall consist of a minimum of 6 to 8 individuals preferably comprised of non-smokers and of both genders. Panelists should be screened and trained.

5. All olfactometer parts that come into direct contact with the sample in any way must be chemically inert and non-reactive and must be able to be purged or cleaned quickly.

III. MODELING PROCEDURES

Modeling protocols must be submitted to the Department for approval. In general, the protocol should follow the recommendations contained in the Department - Bureau of Waste Prevention's Recommended Contents of a Modeling Protocol, dated 6/1/94. These are minimum requirements and specific projects may require further or additional modeling based on the site, initial modeling results or other Department requirements. To highlight:

- **Use the EPA approved ISCST model** and instruction manual. Use generic worst-case meteorological data. Site specific meteorology can be used for refined analysis if limit is exceeded in screening. Site specific data must first be approved by DAQC modeling branch.
- Incorporate downwash and terrain factors in the model;
- Model all sources simultaneously for total impacts;
- Model using worst-case, short term, peak odor emission rates.
- **Acceptable limit (for the purposes of design and compliance testing) is a modeled impact not greater than 5 D/T at the**

more stringent of either (a) the property boundary (b) the maximum ground-level impact off-site, under stability class E for ground level sources or the most conservative stability class for discharges from stacks, unless otherwise approved in writing by the Department. In some cases the Department may agree to allow use of the most sensitive receptor as the design point, even though this may result in a less stringent requirement than use of the property boundary, if requested by the applicant and if adequate justification is submitted to indicate that the both the existing and future land use in between the receptor and facility property line supports such a request.

IV. PROCESS OPERATION AND MAINTENANCE GUIDELINES

All existing composting facilities that are determined by the Department to be causing nuisance conditions must first optimize their O & M procedures so that odor generation is minimized as much as possible from the facility prior to the addition of any odor control equipment. New facilities must be designed to ensure that the facility will employ procedures and equipment effective to minimize odors. Plans submitted for approval regarding optimization of O & M for all facilities should include but not be limited to the following:

A. Evaluate materials handling practices prior to mixing with bulking agent including but not limited to: storage time, chemical addition prior to [illegible]

B. Mixing systems should be designed and/or upgraded to produce an initial homogenous mix without large clumps of raw compost material. For sludge composting excessive moisture should be avoided. Aeration systems should be designed and/or upgraded to ensure that adequate and timely aeration is provided to all parts of the piles during active composting.

C. All biosolids composting systems should be temperature feedback controlled systems such that the temperature is controlled within the optimum range (not greater than 60-65° C preferably below 60°). Uniform aeration is necessary for effective treatment and odor minimization. Uniform aeration should be reflected in a uniform temperature profile within the composting mass.

D. Proper pile height, active composting time, and curing time must be maintained.

E. Curing/storage piles have been shown to be a source of odors

at some facilities. Air dispersion modeling using reliable data and availablility of buffer zones at the site should be used to determine whether curing piles should be located in an enclosed building. Regardless all curing piles should be covered and facilities should be evaluated on a case by case basis to determine whether covering of storage piles is necessary to prevent re-establishment of biological conditions conducive to odor generation. Some facilities will need a dedicated aeration system for curing and possibly even storage piles. **All facilities should have, at a minimum, access to an available portable aeration system available for use on curing and/or storage piles.**

F. Storage of finished compost product should be minimized to avoid potential odors and in general should not exceed one year.

V. AIR POLLUTION CONTROL TECHNOLOGY GUIDELINES

Based on Department experience, available literature and other information, any analysis for odor or odor control should, at a minimum, be based on the following assumptions/findings:

A. Chemical Scrubbers

1. While single stage scrubbers can be effective for ammonia removal, they are not considered to be very effective for the simultaneous removal of both reduced sulfur compounds and ammonia.

2. If wet chemical scrubbing is the odor control technology chosen to remove reduced sulfur compounds, and a first stage scrubber is required for ammonia removal, then a three stage scrubber may be required to optimize reduced sulfur emissions removal and to prevent excessive chlorine emissions. In a three stage system, the first stage is designed for ammonia removal; the second stage for oxidation of reduced sulfur compounds, and the third stage for removal of chlorine carry over from the second stage. The available information points to the need in many cases for the third stage to control chlorine odors and emissions and to allow the operators of the facility to optimize control of reduced sulfur compounds in the second stage.

3. The ammonia removal efficiency of the first stage should be checked to ensure that ammonia does not carry-over into the second stage where it may interfere with the oxidation of odor causing compounds in the second stage.

4. The pH of the second stage should be continuously monitored to ensure that any acid carryover from the first stage does not lower the pH of the second stage excessively.

B. **Biofilters**

1. There now appears to be adequate testing data to demonstrate that biofilters can effectively remove odors from the emissions from sewage sludge (biosolids) composting facilities when the biofilters are operated and maintained correctly.

2. Biofilters should be designed at a loading rate not to exceed 3 cubic feet per minute per square foot (3 CFM/SF) unless otherwise approved in writing by the Department.

3. Inclusion of an irrigation/humidification system that is adequate to prevent drying out of the biofilter is critical.

4. Pre-scrubbing to prevent excessive ammonia and particulate loading is important for some facilities and should be addressed by the project consultant.

5. Biofilters should also be designed with an empty bed detention time of 45 - 60 seconds and should be 3 to 4 feet in depth.

6. The proponent shall provide for a short term contingency in the event of catastrophic failure or for routine replacement of the biofiltration system bed media. The duration of each contingency event shall be for a period necessary to re-establish a population of organisms within the bed for optimum pollutant removal.

C. Use of Activated Sludge Aeration Tanks for Odor Control

The test data available to date is not sufficient for the Department to consider this a proven, and steady state odor control technology at this time. If additional test data becomes available, the Department will revisit the status of this technology. The Department does however encourage innovative technology and will consider applications for pilot or demonstration projects on a case-by-case basis.

VI. EMISSION ESTIMATES

Whenever possible, data from the actual operations at the facility being evaluated should be used in any analysis. For new or modified facilities data from similar processes at other facilities

may be acceptable, depending on the extent of process similarities. Pilot testing may be considered as an alternative in some cases.

The project proponent should clearly state what methodology was used to estimate emission rates used from both controlled and uncontrolled areas. Comparisons of other "similar" facilities must include similarities and differences in HVAC criteria. Emission rates from each area should be adjusted accordingly. All supporting data and assumptions used must be clearly stated.

For the purposes of dispersion modeling of property line/receptor impacts, emissions from biofilters should be assumed to be not less than approximately 50 D/T on average unless adequate info is submitted otherwise, even though some facilities may perform better on an on-going basis.

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July 27, 1999

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

Re: Proposed Modifications to 45 CSR 1,2,3,4,5,6,7,10,16, 17, 18, 23, 25, 33, and 34.

Dear Chief Kropp:

The West Virginia Chamber of Commerce ("Chamber") was a faithful participant in the Office of Air Quality ("OAQ") convened Stakeholder Regulatory Review Workgroup. From those meetings came a number of recommendations and suggestions that were presented to the OAQ for consideration in proposing revision to the West Virginia air quality regulatory program. The Chamber extends its compliments to the OAQ staff for the long hours it committed to this effort. The Chamber is supportive of the review process as a forum available to everyone to listen, learn, and draft proposed state air policy. The open exchange of concerns, ideas, and recommendations has resulted in a proposal package the genesis of which the participants can clearly understand. In some instances compromise was required. The Chamber supports this package of regulatory revisions in the spirit of compromise. These recommended proposals, as a whole, are appropriate and result in improvement in the state air quality program.

The following detailed comments are provided on behalf of the West Virginia Chamber of Commerce.

45 CSR 2 - Particulate Emissions from Boilers

Section 3 Visible Emission Standards - The Chamber had urged consideration of modifications to the criteria for allowing an alternative visible emission standard. The Chamber supports the inclusion of the modifications to the regulation to make it more consistent with the six minute averaging of the rule and to meet the needs of the regulated community, without compromising the ultimate ambient air quality for particulates.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools, to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 2, the Chamber supports the regulatory revisions.

Section 8.4 addresses the potential need for the development of alternatives to the testing, monitoring and reporting requirements of the rule. The Chamber is supportive of the inclusion of this concept. The OAQ proposes to recognize unique operational characteristics that either make the implementation of Regulation 2, Section 8 impossible or unreasonable. This modification is evidence of the OAQ's commitment to work toward the development of a program that works with the regulated community to assure an effective air quality regulatory requirement. The Chamber applauds these and other similar efforts.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

45 CSR 3 - Hot Mix Asphalt

Regulation 3 had not undergone review since 1979. Many of the modifications to this regulation have been proposed to update and streamline the rule. The Chamber is supportive of the proposed changes.

Section 3.2 Start-up and Shut-down of Operations - During the Stakeholder Review Process, the Chamber had urged regulatory recognition of shut-down conditions, as has been done under the remainder of the OAQ regulatory program. The OAQ has proposed inclusion thereof. Again, the Chamber applauds the efforts of the OAQ to streamline the regulations and create consistency where possible.

45 CSR 4 - Objectionable Odors

Regulation 4 is being proposed for significant modification in response to the OAQ's recommendations. The Stakeholder Review Process engaged in lengthy discussions over the concerns of the agency and the problems they wished to see addressed. The Chamber participated in those discussions and is supportive of this ultimate proposal. This rule is new and we will all learn more about its impact on the air quality program as the agency begins to administer it. This proposal is a good first attempt.

Section 2.5 Objectionable Odors - This proposed definition underwent a great deal of discussion during the Stakeholder Review Process. The Chamber is supportive of this definition based upon the representation by the agency that this odor regulation would be implemented based upon a combination of factors (investigations, determinations, and complaints). Recognition of the need for a combination of factors gives the definition of "objectionable odors" the depth it needs to avoid abuse by reported complaints that may or may not be inspired by an environmental condition. The Chamber is supportive of a well designed regulatory program that assures the environmental regulations will not be subject to abuse by parties who may wish to use it to advance alternative political objectives.

Section 4.1 Accidental and Other Infrequent Emissions, Reporting - The Chamber had advanced a concern about the need to create an affirmative obligation for the reporting of accidental or other infrequent emissions that was reasonable. The OAQ's proposal both creates the obligation and clarifies that such a report is due upon the reasonable determination by a person that they are responsible for the objectionable odor. The Chamber is supportive of this language and believes its reasonableness standard complements other more stringent reporting obligations that are truly environmentally-based. The Chamber notes a typographical error where the last line of this regulation should read: "reasonably has knowledge of such discharge."

Section 7 Enforcement - This language is written such that it fails to recognize the notification and investigation process described in Section 3 of this rule. The Chamber is supportive of the need for the OAQ to preserve its authority to exercise its enforcement authorities when the emission of air pollution is causing a violation of the WV Air Pollution Control Act. The Stakeholder Review Process invested significant resources in developing this rule. The Chamber presumes the OAQ intended for this language in Section 7 as a reservation of enforcement authority that would be invoked after reasonable efforts to implement Section 3 had failed.

45 CSR 5 - Coal Preparation Plants, Coal Handling, and Coal Refuse

This regulation has been expanded to incorporate the current 45 CSR 1 which regulates coal refuse. In the interest of consolidating the air quality regulations that impact the coal industry, it was proposed that its requirements be combined with 45 CSR 5. The Chamber participated in the efforts to combine these regulations and complements the OAQ's efforts to affect this combination as seamlessly as possible. This modification is consistent with the intent and purpose of the Stakeholder Review Process which was to revise and update.

Sections 3.2 and 3.3 Particulate Emission Limits - The OAQ has proposed revision to the opacity limits by offering the statement, during the Stakeholder Review Process, that these revisions were based upon the need to address the calculation of averaging, as opposed to aggregation. The regulatory impact of these changes was not readily apparent to any of the participants in the Review Process, to include the OAQ. It is the understanding of the Chamber that these revisions were not intended to be submitted, since the Stakeholder participants were so unclear as to the impact of the proposed change. The Chamber urges that the regulation be restored to its original language.

Section 10 Reports and Testing - The Chamber supports the proposed modifications to this section to emphasize the EPA test methods used by most operations. The proposal merely updates and refines the regulation without changing its effect.

Section 11 Variance - The proposed modifications to the administrative process of granting a variance were discussed at length during the Stakeholder Review Process. The intent of the modifications was to provide a well defined process for managing equipment failure. The Chamber supports the OAQ's inclusion of these revisions. The suggested modifications will serve to enhance the smooth administration of the variance process that currently exists. Administrative efficiency is an important factor and the Chamber applauds the agency's efforts to incorporate such changes.

45 CSR 6 - Combustion of Refuse

Section 3.1.c.4 Pre-Approval of Burning - The proposed revisions to Regulation 6 are principally those revisions recommended by the OAQ during the Stakeholder Review Process. Generally, these modifications have been designed to update this regulation. The Chamber is supportive of the proposed changes and further recommends that the agency consider the development of an interpretive rule, or other appropriate administrative tool for implementation, that will provide guidance to the regulated community concerning the new requirement that approval to conduct burning of land clearing debris must be obtained. Consistent with the stated goals of this regulatory review process, clear communication as to what the agency expects of the regulated community will go far to assure smooth implementation of the modified provisions of Section 3.1.c.4.

45 CSR 7 - Particulate Emissions from Manufacturing Processes

The Stakeholder Review Process devoted significant time to exploring the particulate emissions control program as set forth under Regulation 7. This is a complex rule that attempts to regulate a very diverse universe of manufacturing processes. This fact alone seriously complicates any effort to streamline and clarify its intent. The Chamber extends it complements to the OAQ staff for its efforts during the Stakeholder discussions to explain the agency's needs with regard to this rule. The Chamber recommends for consideration the future need to review the merit of splitting Regulation 7 into several small regulations that are industry category specific. Such a split would significantly simplify the implementation and compliance with this rule.

Section 2.18 Maintenance Operations - The Chamber had proposed consideration by the Stakeholder Workgroup the need to recognize that certain maintenance operations result in emissions of particles that are not clearly defined under Regulation 7. This lack of clarity had resulted in inconsistent interpretation and enforcement. In response to that request, the OAQ has proposed a definition and a well defined exemption for certain maintenance operations that are not adversely impacting air quality under Section 10.3. The Chamber is supportive of these revisions as resulting in clarification of the regulation. These revisions recognize the fact that certain maintenance operations are insignificant and infrequent sources of particles not warranting extensive regulation, but instead warranting management through good engineering practices.

Section 2.39.d Type 'd' Manufacturing Processes - The Chamber had raise concerns over the need to clarify the scope of those manufacturing processes in which material of any origin undergoes a chemical change. In response to those comments, the OAQ has proposed the phrase "and this chemical change results in the emission of particulate matter to the atmosphere." The Chamber supports this change as one that serves to enhance the implementation of and compliance with this rule.

Section 3.7 Emissions from Storage Structures - The revisions to this section were intended by the Stakeholder Workgroup to be clarifying modifications to the requirement to control emissions from storage structures. The Chamber supports this revision as one that serves to streamline the requirement to control emissions from storage structures.

Section 5 - Control of Fugitive Particulate Matter - It was proposed by the Chamber that it would be appropriate to add language to expand the meaning of a fugitive particulate control system to include process equipment design, control equipment design or operation and maintenance procedures. These are important and effective alternatives that warranted recognition in the regulatory program. The OAQ has proposed inclusion of these alternatives confirming these fugitive control measures. The Chamber supports these modifications as enhancements to the meaning of the rule.

Section 10 - Alternative Visible Emission Standards - The Stakeholder Workgroup engaged in extensive discussions over the need to provide a similar process for demonstrating the need for an alternative visible emission standard for start-up and shutdowns as exists for sources of particles that are regulated from boilers. The results of those discussions are found in the proposed new section 10.4. The Chamber supports these recommended changes that create a process by which a manufacturing source operation is afforded the opportunity of demonstrating the need for an alternative standard that is protective of air quality.

Sections 10.5 and 10.6 Deminimus Sources of Particles - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of particles and mineral acids. Inclusion of these new sections is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 11 - Alternative Emission Limits for Duplicate Source Operations - The OAQ has proposed a section to address duplicate source operations that elect to petition for an alternative emission limit in response comments raised in the Stakeholder Review Process. It was recognized by the Stakeholder Review Workgroup that the issues surrounding the state "duplicate source" rule are very complex. The Chamber supports inclusion of this section that serves to create a review process for alternative emission limits for duplicate source operations. This provides an alternative to litigation which enhances regulatory efficiency.

The Chamber advocated for the removal of the "duplicate source" provisions as an archaic regulatory tool that has long since been rendered obsolete by the Clean Air Act Amendments and specifically by the NSR program. It is recommended that future modifications to Regulation 7 should focus on the need to eliminate these requirements.

45 CSR 10 - Sulfur Oxides

Section 3.4.b. Individual Allowable Stack Emission Rates - The Chamber supports the OAQ's inclusion of provisions that would allow the agency to address those facilities with individual stack allowable emission rates differing from those calculated under the rule, based upon compliance with the criteria set forth in 3.4.b.1 through 3.4.b.6. This rule revision is evidence of the agency's interest in working with the regulated community to assure an implementable program that results in protection of air quality.

Section 4.1.e Deminimus Operations - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of sulfur oxides. Inclusion of this new section is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 10, the Chamber supports the regulatory revisions.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

Section 10.3 Exemptions - The Chamber supports the proposed exemption from the testing, monitoring, recordkeeping and reporting requirements for those operations that are known not to emit levels of sulfur oxides to warrant such requirements. These proposed modifications are clearly intended to streamline the regulation and provide for an appropriate level of regulation commensurate with the environmental impact.

45 CSR 17 - Fugitive Particulate Matter

The proposed revisions to Regulation 17 were presented to the Stakeholder Review Workgroup by the OAQ. The OAQ expressed the need to have a regulatory tool that could be used to require management of fugitive emissions from sources that were not otherwise subject to the OAQ regulatory program. In recognition of that expressed need, it was agreed by the Stakeholder Workgroup that Regulation 17 should be significantly expanded. The

Chamber is supportive of these proposed changes that create a process by which sources would be contacted by the agency and efforts expended to develop a reasonable emissions control or suppression program.

45 CSR 18 - Meat Firing

The Stakeholder Workgoup discussed the history of the promulgation of the meat-firing regulation and concluded that this regulation was no longer warranted, based upon the fact that its provisions had not recently been invoked, implemented, or useful in an manner to the public, the agency or the potential regulated community. The Chamber supports the elimination of this regulation as clearly within the scope of updating the OAQ program.

Additional modifications have been proposed by the Office of Air Quality for the following regulations to make necessary and appropriate cross-references to the federal program. The Chamber is supportive of these modifications.

45 CSR 16 - New Source Performance Standards

45 CSR 23 - Municipal Solid Waste Landfills

45 CSR 25 - Hazardous Waste Treatment, Storage, or Disposal Facilities

45 CSR 33 - Acid Rain

45 CSR 34 - Hazardous Air Pollutants

In conclusion, the Chamber provided an oral statement at the hearing of July 19, 1999. In that statement the Chamber urged that a thorough Response to Comments be provided by the OAQ concerning the proposed rulemaking package that will explain the intent of the modifications as was agreed during the Stakeholder Review Process. This will serve to memorialize the changes that will be made to the regulations and provide guidance concerning the implementation of these changes.

Respectfully, submitted this 27th of July, 1999.

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FAX Transmittal Sheet

Date: 7/22/99

Pages: 19
Including Transmittal Sheet

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COMMENTS:

I have been involved in developing a protocol for measuring composting odors and developing remediation procedures.[1] I am pleased to comment on your proposed regulation (45CSR4).

While your efforts have been well intentioned, I find the results weak and ineffectual. For example, definitions (45-4-2) does not describe odor or current methods for measurement or remediation.

[1] I also teach "Commercial Composting" at WVU.

SECTION 45-4-3 "Objectionable Odor Prohibited" actually permits the person generating offensive off-site doors to continue generating such odors as long as they are conducting related studies "as approved by the Director".

I submit to you, sir, that when serious odor events occur the time for studies is over (these should have been done in the permitting process). Now is the time for ACTION - this means immediate remediation and shut-down as required.

I strongly recommend we adopt the draft "COMPOST FACILITY REGULATIONS" Commonwealth of Massachusetts.

In a conversation with Sumner Martinson, Massachusetts DEP 7/20/99, he affirmed that these regulations have been very helpful in developing the Composting Industry in Massachusetts while at the same time protecting the public from offensive odor events. He further said these rules would have been adopted earlier, but being held up until solid waste rules under review can be brought up-to-speed as a package. In the meantime, they will continue to use the Draft Regulation without exception!

Dr. R. G. Diener, P.E., Professor
Agricultural & Environmental Education

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COMPOST FACILITY REGULATIONS: PUBLIC COMMENT DRAFT

DOCUMENT # 2

DRAFT ODOR POLICY

January 1996

Draft Guidance and Policy for the Evaluation of Odors at Composting Facilities

INTRODUCTION

The Massachusetts Department of Environmental Protection's (the "Department's) Integrated Waste Management Strategy applies to all waste streams regulated by the Department. The hierarchy of this strategy is to first reduce the generation of wastes. Once a waste is unavoidably generated, the strategy encourages attempts to productively reuse or recycle this waste material. The last resort is the direct disposal of waste materials without any reuse/ recycling or treatment.

Composting of organic waste materials is an important process that allows for the effective recycling of these biodegradable waste materials. Most of the composting experience in Massachusetts has been with domestic wastewater sludge (biosolids) and yard waste, however there is growing local interest in composting fractions of the municipal solid waste stream, agricultural and food-processing wastes. Composting is not a new technology. Composting has been practiced for centuries and has been considered a viable sludge management option for 15 - 20 years (or longer).

While there have been many municipal sludge success stories across the country there have also been some notable failures. Unfortunately, in Massachusetts, our experiences have included many in the "failure" category rather than in the "success category". The nature of the organic material being handled and the proximity of many composting operations to local residents make sludge composting a likely candidate for odor problems.

Odor problems can be very technically complex to control and costly to manage if not properly considered during the project planning and design phases for facilities.

The objective in permitting new composting facilities is to assure that reasonable steps are taken proactively to prevent off-site nuisance odors from occurring. Based on the Department's experience with existing operations, it is prudent to develop sound odor management strategies in the planning and design phases of the project. Costs for controls are usually less costly if done as part of the initial project design, rather than as "add-ons" once the project is up and operating.

This document was prepared specifically for operations which involve the composting of biosolids (sewage sludge) and municipal solid waste. However, the general methodology and procedures can be applied to the evaluation of other sources of odors on a case-by-case basis. The Department generally uses individual compounds for evaluating non-composting wastewater treatment plant odors.

DRAFT JANUARY 3, 1996 FOR DISCUSSION ONLY

COMPOSTING ODOR POLICY

APPLICABILITY: This policy was prepared primarily for biosolids (sludge) and municipal (non-yard waste) solid waste composting facilities but the Department may use the policy on a case by case basis for yard waste composting odors and other odors as appropriate.

The intent of this document is to provide consistency and guidance in the complex area of odor control and evaluation at composting operations. Nothing contained herein should be construed as prohibiting further requirements or review as deemed appropriate on a case by case basis. Further, nothing in this policy should be construed as allowing a condition of air pollution (odor nuisance) as defined in 310 CMR 7.00 "Air Pollution Control Regulations". Additional methods and guidelines are outlined in the "**Supplemental Guidance Document**", attached.

1. **PROPOSED (NEW) SOURCES:** Experience has shown that the need for odor control is the rule rather than the exception at biosolids and municipal solid waste composting facilities. Therefore, except as outlined in item #4 below, proposed (new) non-yard waste composting facilities must:

   A. Include air pollution control for all emissions from active composting operations and analyze whether other sources (general building ventilation air, mixing area, curing piles, etc.) need controls. Any odor control treatment systems should be designed consistent with the attached "Supplemental Document". The level of control, BACT, shall include all reasonable practices to reduce/minimize odors and add-on controls as determined by a BACT analysis (see definition of BACT, item #3).

   B. Demonstrate through Department approved air dispersion modeling that any odors emitted will not result in a predicted off-site nuisance odor condition. All composting odors, all odors from non-composting operations at the site (i.e. wastewater treatment unit processes) that are generated at sufficient levels to cause off-site nuisance conditions and all residual odors remaining after controls should be included as inputs to the model.

C. Prepare and submit to the Department for review and approval an odor management plan that incorporates Best Management Practices (BMPs). The odor management plan should include at a minimum the following:

i. a plan that details specific operational procedures that shall be used to minimize odor generation,

ii. a contingency plan for facility upset and/or nuisance conditions,

iii. a complaint response program and a proposal for a community outreach/involvement program.

2. **EXISTING SOURCE ODOR PROBLEMS:** Existing facilities that the Department determines are creating or contributing to an off-site nuisance condition should:

A. Identify and quantify all sources of odor at the site, including odors from non-composting activities;

B. Prepare and submit to the Department (within the time frame determined by the Department's regional office) a compliance plan to remedy the existing odor problems that includes a schedule for initiation of control measures, including, but not limited to:

i. Optimization of operating and maintenance (O&M) procedures to reduce the generation of odors; and

ii. An air pollution control/treatment system for, at a minimum, all emissions from active composting operations. In addition, an evaluation of the need for an odor treatment/control system shall be conducted for all other areas such as mixing, curing and storage areas.

iii. Evaluation of all other odor control options and their effectiveness/applicability to the source.

iv. Demonstration of control plan effectiveness through the Department approved air dispersion modeling (see item #1B).

C. Upon the Department approval of the compliance plan, implement all steps of the plan.

3. **BACT (Best Available Control Technology)** is an emission limit based on the maximum degree of reduction of an air contaminant emitted from a facility which the Department, on a case-by-case basis taking into account energy, environmental, economic impacts and other costs, determines is achievable through application of production processes and available methods, systems and techniques for control of such contaminants.

A BACT analysis (determining BACT) shall be conducted in a "top-down" manner. **All** control methods and devices possible must be considered; elimination of specific strategies must be documented on technical, economic or other considerations. Control methods currently and successfully in long-term use at other similar facilities will automatically be considered technically feasible unless substantial documentation to the contrary is provided.

The **minimum** level of air pollution control that will be considered BACT is that level **which will not result in a condition of nuisance odors off-site.** This criteriaon must be met **regardless** of the cost such control would entail.

4. **EXEMPTIONS:** The Department recognizes that some sources may not warrant add-on air pollution/odor control devices for reasons such as remote site location. However, the Department has determined that most non-yard waste composting operations do need controls; a position which has been substantiated by numerous experiences with existing facilities. The Department will consider, on a case by case basis, exemptions from the add-on control requirement for new facilities, item #1A, (but not for existing facilities with odor problems), if the proponent can demonstrate a condition of odor will not occur due to the size and location of the facility. Such exemptions will not be considered for facilities in urban areas or very close to residential areas in rural areas. A detailed dispersion modeling analysis and other supporting documentation must be submitted to the Department as part of any such exemption request.

Facilities that receive such an exemption must submit to the Department, for review and approval, a detailed contingency plan. The contingency plan must include a written agreement adequate to ensure that an available alternative disposal, handling, or composting facility exists should odorous conditions necessitate the routing of the compostable material to an alternate facility. The contingency plan must also detail what operation and maintenance steps will be taken to minimize odors at the facility applying for the exemption should nuisance conditions occur.

5. **CRITERIA FOR APPROVAL:** The design of proposed sources, as well as proposed modifications to a source, should be evaluated for an impact of five (5) Dilutions to Thresholds (D/T) or less (see Section 7 below and also attached Supplemental Guidance Document, Section II for the definition of D/T), as predicted by the Department approved air dispersion modeling. (Impacts should be evaluated at the property boundary or at the point of maximum impact beyond the property boundary, whichever results in a higher predicted impact, unless otherwise approved in writing by the Department.) In some cases the Department may agree to allow use of the most sensitive receptor as the design point, even though this may result in a less stringent requirement than use of the property boundary, if requested by the applicant and if adequate justification is submitted to indicate that the both the existing and future land use in between the receptor and facility property line supports such a request. 5 D/T should to be used as a design standard only in accordance with Section #6 below.

The applicant should demonstrate compliance with a design standard (as predicted at the property boundary or at the point of maximum impact beyond the property boundary, which ever results in a higher predicted impact) less than 5 D/T at sites for which the Regional Director of the Department's regional office determines are appropriate due to local meteorology and topography, previous history of chronic odors or intensity/density of local development.

Use of 5 D/T as a minimum design standard in no case exempts a facility from having to operate in such a way as to prevent nuisance conditions from occurring off-site. The facility operator is responsible for ensuring that nuisance conditions do not occur off-site (beyond the property line) regardless of the D/T level designed for and regardless of the results of compliance testing.

For existing sources, as well as proposed and modified sources after they are in operation, a condition of odor will be determined by Department personnel (or by local agencies as allowed by the Department's regulation 310 CMR 7.52) during actual site visits and other pertinent information (such as complaints) as well as by compliance testing results. Modeling results which represent conditions at a particular point in time are not in of themselves sufficient to prove that an odor does not exist at an operating facility.

6. **EMISSION LIMITATIONS:** The emission rates resulting from the BACT analysis and used in the modeling to demonstrate compliance with the design criteria of 5 D/T, will become the facility's allowable emission rate. A composting facility may have more than one emissions limit if more than one odor source exists at the facility. Potential sources include

emissions from treatment systems such as biofilters and chemical scrubbers; areas that are vented without treatment (through fans and stacks or through building ventilation systems) and outside piles and storage areas.

7. **TESTING:** All new non-yard waste composting sources and associated air pollution/odor control equipment should undergo compliance testing either twice per year or at a frequency that the Department determines is sufficient to demonstrate compliance with odor emission limits and/or control efficiencies as contained in any Department approval for the source. Any existing composting operations that the Department determines in writing is likely to be generating off-site odor nuisance conditions may also be required to undergo compliance testing.

Compliance testing should consist of odor panel analysis of samples taken at the points of generation and the analysis should be conducted in accordance with ASTM Method 679-91 unless otherwise approved by the Department. Sampling and analysis should be conducted in accordance with the attached "Supplemental Document". Samples should be taken from the point(s) of generation. In no case should sample storage time exceed 24 hours prior to odor analysis.

If the compliance testing indicates an exceedance of the "back-calculated" emissions limit, the composting facility should at a minimum initiate a preliminary investigation into the reasons for the exceedances. The preliminary investigation should include at a minimum an evaluation of whether odor control system and aeration system components are operating correctly. In addition, a scope of work for tasks related to a more detailed and comprehensive evaluation of the reasons for the exceedances should be submitted (with the preliminary investigation) to the Department for review and approval as soon as possible but in no case later than 30 days from the facility's receipt of the compliance testing results. The scope of work should include an evaluation of whether O&M procedures can be modified to minimize odor generation rates at the facility.

8. **DETERMINATION OF NUISANCE:** Limited testing can not cover all operating conditions and odor level testing includes some inherent variability. Therefore, the Department will also use site visits and will consider other pertinent information (complaints, etc.) when determining whether odor/nuisance conditions exist off-site regardless of emissions compliance test results. The operator should complete a standard form (to be prepared by the Department) for all odor complaints received by the composting facility. Copies of the completed form should be sent to the Department, the local Board of Health, and the complainant.

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Supplemental Guidance Document

The following document discusses in greater detail the method of analysis and other guidelines to be used in evaluating odors. It describes:

I. Odor Generating Operations
II. General Odor Analysis Procedures
III. Modeling Protocol
IV. Process Operation and Maintenance
V. Air Pollution Control Guidelines
VI. Emission Estimates

Note that much of this guidance is subject to change as new information becomes available to the Department. This document should be viewed as guidance, allowing for deviation where substantial documentation is provided for an alternative analysis.

I. ODOR GENERATING OPERATIONS

There are many potential odor sources at a compost facility. When conducting an analysis of odor, the focus must be on individual areas and unit operations. An "overall" plant odor analysis is not acceptable except in demonstration of total off-site odor impacts. Areas are often overlooked and only those areas **perceived** as major odor sources are analyzed. To avoid overlooking potentially important contributing area sources, each source of odor must be evaluated and ranked according to its strength and size.

Operations to be specifically analyzed are any areas with potential odor generation, including but not limited to the following potential sources (wastewater treatment plant operations are included because they are often located on or near the same site as composting operations):

Wastewater Treatment Plants	Head Works/Influent Structure
	Grit Channels
	Septage Receiving/Treatment/Handling
	Aeration Basins
	Primary Clarifiers
	Secondary Clarifiers
	Sludge Thickening and Dewatering
	Sludge Processing
	Sludge Storage
	Sludge Transfer Areas
Composting	Materials Receiving Areas
	Pre-composting Processing/Storage
	Active Composting
	Curing
	Finished Product Storage

II. GENERAL ODOR ANALYSIS PROCEDURES

There are two basic methods of defining odor:

1. By specific compound, for example, hydrogen sulfide. Many studies have been conducted and results published on the odor threshold of various compounds. The available information/ studies on the detection thresholds for individual compounds contain a wide range of detection limits (with one to two orders of magnitude difference for some common odorous compounds).

2. By an overall rating of the odor without regard to specific chemicals. The odor from composting, for example, can be derived from hundreds of odorous compounds. The quantifying of an overall odor is sometimes given by the number of dilutions of clean, odor-free air (plus the one volume of odorous air) necessary to reduce the odor to a level at which 50% of a particular panel can detect any odor. Thus, **a Dilution to Threshold (D/T) of 5 indicates that any given volume of the odorous air must be diluted with odor-free air of 4 times the volume of odorous air in order to dilute the odorous sample to a level at which 50% of an odor panel can detect any odor from the diluted sample.**

Odor can also be rated in terms of its intensity, usually referenced against butanol intensity. D/T and "odor intensity" levels are often reported together since both are usually rated as part of odor panel evaluations. There are advantages and disadvantages to each of these methods but the one common weakness is the fact that the ability to detect odors by people is subject to considerable variability. This is true for both compound specific odor threshold levels and evaluation of overall odors. In addition, odor intensity as measured by butanol intensity (as opposed to D/T levels) is not readily modeled in dispersion models.

Issues relevant to both methods are discussed in more detail below (Sections A and B). Their use/applicability is discussed in Section C below.

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A. Specific Compounds

Odor causing compounds are produced during incomplete microbial oxidation of organic materials (principally carbohydrates and proteins). Under anaerobic conditions, (a) carbohydrates break down into odorous compounds such as alcohols, aldehydes, esters, and organic acids such as butyric acid and (b) proteins produce ammonia and amines, and mercaptans and reduced sulfur compounds.

In reviewing current literature, it was determined that certain odor causing compounds are commonly detected during sampling and analysis of emissions from biosolids processing operations. The specific compounds vary depending upon the exact process and levels can vary dramatically from facility to facility. The specific chemicals depend upon the number and type of operations existing at the facility.

The following lists the more common odorous compounds detected by type of operation.

Wastewater Treatment Plant (primary and secondary treatment)	Ammonia and Amines Hydrogen Sulfide Mercaptans
Sludge Composting	Ammonia Dimethyl Disulfide Dimethyl Sulfide Fatty Acids Mercaptans

The following additional compounds also have been identified. However, insufficient information exists at this time to classify them as a cause of nuisance problems. These compounds are often found as a result of wood chip and other bulking agent decomposition.

Sludge Composting	Limonene and other terpene compounds

Odor levels for compounds are divided into several classes including detection (the level at which an odor is first detected) and recognition (the level at which the odor can be identified as a specific compound) levels. Within these classes there are also many divisions such as the 50% and 100% recognition levels (i.e. the level at which 50% and 100% of the people recognize the odor). Therefore, for any one compound, there may be many different values reported for odor thresholds. Varying individual perception thresholds of odor even complicates the issue further.

In the opinion of the Department, the determination of a nuisance condition resulting from composting odors should not, in the final analysis, be based on specific chemical thresholds. Because of synergistic effects, different levels of sensitivity to odors, and limitations on analytical methods and other factors a nuisance may exist even when specific compounds are found to be below any established thresholds. Nuisance determination should always be a case by case judgement.

B. Overall Odor Rating (Odor Panel Testing)

The overall method of odor analysis does not identify individual compounds, but uses a total of all odor detected. Thus, synergistic effects and odors from compounds too obscure or dilute to analytically measure are accounted for in the analysis. The most common overall method is the use of odor panels to determine the Dilutions to Threshold (D/T) level as previously described.

A review of regulations from other states indicates that several states have ambient odor limits based on D/T levels of 7 - 8 D/T. California has a 5 D/T ambient limit (for at least some portions of the state) as well as limits on D/T levels (and certain specific compounds) for emissions from stacks. Agricultural operations are usually exempted by states but one state sets an ambient limit of 127 D/T for such operations. Other literature references cite a D/T of 5 - 10 as the level at which complaints can begin to be expected at many sites.

The Odor Policy Work Group (that includes members from a variety of Divisions and Bureaus within the Department) has met with consultants involved in the evaluation of new composting facilities in the New England area, conducted a phone survey of composting operations around the country, reviewed studies and articles in the literature, and evaluated applicable dispersion modeling results. Based on this review, **the Odor Policy Work Group has proposed a design standard of a maximum modeled impact of 5 D/T at the property line (or most sensitive receptor if approved by the Department) to be used as a minimum design standard for emissions from odor control systems** at most properly operated composting operations.

The Department may however require as part of facility permitting that the applicant demonstrate compliance with a design standard (as predicted at the property line and/or most sensitive receptor) less than 5 D/T at sites for which the Regional Director of the Department's regional office determines are appropriate due to local meteorology and topography, previous history of chronic odors or intensity/density of local development.

Even scrubbers and biofilters (as well as storage piles) a properly operated facilities emit residual odors that can b detected in odor panel testing. For this reason the Department i concerned that use of a mandatory design criteria more stringen than 5 D/T for all facilities may result in many properly operatec composting facilities not being allowed to attempt to demonstrate that the facility can operate without creating off-site nuisance conditions. Such an effect could have a serious impact on the feasibility of composting operations in Massachusetts.

Use of 5 D/T as a minimum design standard in no case exempts a facility from having to operate in such a way as to prevent nuisance conditions from occurring off-site. The facility operator is responsible for ensuring that nuisance conditions do not occur off-site (beyond the property line) regardless of the D/T level designed for and regardless of the results of compliance testing.

C. Applicability to Design

After review of the advantages of the different approaches to odor analysis and the inherent limitations of each, a combination of methods is prescribed. Specifically:

1. Specific chemicals can be used for air pollution treatment efficiency evaluation and should be considered by the facility operator as a tool to evaluate design performance as appropriate. In such uses, individual chemicals measured by existing analytical procedures can help evaluate the performance of control equipment.

2. Overall odor is to be used for total off-site impacts (demonstration of odor impact). As such, individual sources (stacks, biofilters, outside operations, etc.) that generate significant odor emissions will also have an overall odor level performance emissions standard associated with them.

D. Odor Panel Testing Procedures

1. Odor samples should be collected into gas sampling bags made of Tedlar unless otherwise approved by the Department. Odor samples should be collected using a sampling line made of an odor-free, chemically inert and non-reactive material.

2. The sampling bag should be filled purged with the sample at least once prior to collecting the sample to precondition the sampling line and the interior walls of the sampling bag. The gas should be transferred directly into the sampling bag without going through any potential sources of contamination such as pumps. Samples should be maintained at ambient temperature and contact with direct sunlight should be avoided. Under no circumstances should sample storage exceed 24 hours.

3. **Air flow should be regulated at a minimum of 3 liters per minute per sniff port unless otherwise approved in writing by the Department.** Therefore, total air flow rate to the olfactometer (that consists of three ports) would be a minimum of 9 liters per minute unless otherwise approved by the Department in writing. During odor panel testing each diluted sample must be presented to the sample with two odor-free blanks (for statistical validation purposes) by using three sniff ports.

4. Odor panels shall consist of a minimum of 6 to 8 individuals preferably comprised of non-smokers and of both genders. Panelists should be screened and trained.

5. All olfactometer parts that come into direct contact with the sample in any way must be chemically inert and non-reactive and must be able to be purged or cleaned quickly.

III. MODELING PROCEDURES

Modeling protocols must be submitted to the Department for approval. In general, the protocol should follow the recommendations contained in the Department - Bureau of Waste Prevention's Recommended Contents of a Modeling Protocol, dated 6/1/94. These are minimum requirements and specific projects may require further or additional modeling based on the site, initial modeling results or other Department requirements. To highlight:

- **Use the EPA approved ISCST model** and instruction manual. Use generic worst-case meteorological data. Site specific meteorology can be used for refined analysis if limit is exceeded in screening. Site specific data must first be approved by DAQC modeling branch.
- Incorporate downwash and terrain factors in the model;
- Model all sources simultaneously for total impacts;
- Model using worst-case, short term, peak odor emission rates.
- **Acceptable limit (for the purposes of design and compliance testing) is a modeled impact not greater than 5 D/T at the**

more stringent of either (a) the property boundary (b) the maximum ground-level impact off-site, under stability class E for ground level sources or the most conservative stability class for discharges from stacks, unless otherwise approved in writing by the Department. In some cases the Department may agree to allow use of the most sensitive receptor as the design point, even though this may result in a less stringent requirement than use of the property boundary, if requested by the applicant and if adequate justification is submitted to indicate that the both the existing and future land use in between the receptor and facility property line supports such a request.

IV. PROCESS OPERATION AND MAINTENANCE GUIDELINES

All existing composting facilities that are determined by the Department to be causing nuisance conditions must first optimize their O & M procedures so that odor generation is minimized as much as possible from the facility prior to the addition of any odor control equipment. New facilities must be designed to ensure that the facility will employ procedures and equipment effective to minimize odors. Plans submitted for approval regarding optimization of O & M for all facilities should include but not be limited to the following:

A. Evaluate materials handling practices prior to mixing with bulking agent including but not limited to: storage time, chemical addition prior to dewatering, etc. Size requirements for the bulking agent should be specified in contract documents.

B. Mixing systems should be designed and/or upgraded to produce an initial homogenous mix without large clumps of raw compost material. For sludge composting excessive moisture should be avoided. Aeration systems should be designed and/or upgraded to ensure that adequate and timely aeration is provided to all parts of the piles during active composting.

C. All biosolids composting systems should be temperature feedback controlled systems such that the temperature is controlled within the optimum range (not greater than 60-65° C preferably below 60°). Uniform aeration is necessary for effective treatment and odor minimization. Uniform aeration should be reflected in a uniform temperature profile within the composting mass.

D. Proper pile height, active composting time, and curing time must be maintained.

E. Curing/storage piles have been shown to be a source of odors

at some facilities. Air dispersion modeling using reliable data and availablility of buffer zones at the site should be used to determine whether curing piles should be located in an enclosed building. Regardless all curing piles should be covered and facilities should be evaluated on a case by case basis to determine whether covering of storage piles is necessary to prevent re-establishment of biological conditions conducive to odor generation. Some facilities will need a dedicated aeration system for curing and possibly even storage piles. **All facilities should have, at a minimum, access to an available portable aeration system available for use on curing and/or storage piles.**

F. Storage of finished compost product should be minimized to avoid potential odors and in general should not exceed one year.

V. AIR POLLUTION CONTROL TECHNOLOGY GUIDELINES

Based on Department experience, available literature and other information, any analysis for odor or odor control should, at a minimum, be based on the following assumptions/findings:

A. Chemical Scrubbers

1. While single stage scrubbers can be effective for ammonia removal, they are not considered to be very effective for the simultaneous removal of both reduced sulfur compounds and ammonia.

2. If wet chemical scrubbing is the odor control technology chosen to remove reduced sulfur compounds, and a first stage scrubber is required for ammonia removal, then a three stage scrubber may be required to optimize reduced sulfur emissions removal and to prevent excessive chlorine emissions. In a three stage system, the first stage is designed for ammonia removal; the second stage for oxidation of reduced sulfur compounds, and the third stage for removal of chlorine carry over from the second stage. The available information points to the need in many cases for the third stage to control chlorine odors and emissions and to allow the operators of the facility to optimize control of reduced sulfur compounds in the second stage.

3. The ammonia removal efficiency of the first stage should be checked to ensure that ammonia does not carry-over into the second stage where it may interfere with the oxidation of odor causing compounds in the second stage.

4. The pH of the second stage should be continuously monitored to ensure that any acid carryover from the first stage does not lower the pH of the second stage excessively.

B. Biofilters

1. There now appears to be adequate testing data to demonstrate that biofilters can effectively remove odors from the emissions from sewage sludge (biosolids) composting facilities when the biofilters are operated and maintained correctly.

2. Biofilters should be designed at a loading rate not to exceed 3 cubic feet per minute per square foot (3 CFM/SF) unless otherwise approved in writing by the Department.

3. Inclusion of an irrigation/humidification system that is adequate to prevent drying out of the biofilter is critical.

4. Pre-scrubbing to prevent excessive ammonia and particulate loading is important for some facilities and should be addressed by the project consultant.

5. Biofilters should also be designed with an empty bed detention time of 45 - 60 seconds and should be 3 to 4 feet in depth.

6. The proponent shall provide for a short term contingency in the event of catastrophic failure or for routine replacement of the biofiltration system bed media. The duration of each contingency event shall be for a period necessary to re-establish a population of organisms within the bed for optimum pollutant removal.

C. Use of Activated Sludge Aeration Tanks for Odor Control

The test data available to date is not sufficient for the Department to consider this a proven, and steady state odor control technology at this time. If additional test data becomes available, the Department will revisit the status of this technology. The Department does however encourage innovative technology and will consider applications for pilot or demonstration projects on a case-by-case basis.

VI. EMISSION ESTIMATES

Whenever possible, data from the actual operations at the facility being evaluated should be used in any analysis. For new or modified facilities data from similar processes at other facilities

may be acceptable, depending on the extent of process similarities. Pilot testing may be considered as an alternative in some cases.

The project proponent should clearly state what methodology was used to estimate emission rates used from both controlled and uncontrolled areas. Comparisons of other "similar" facilities must include similarities and differences in HVAC criteria. Emission rates from each area should be adjusted accordingly. All supporting data and assumptions used must be clearly stated.

For the purposes of dispersion modeling of property line/receptor impacts, emissions from biofilters should be assumed to be not less than approximately 50 D/T on average unless adequate info is submitted otherwise, even though some facilities may perform better on an on-going basis.

Public Hearing Statement of
Kathy G. Beckett
On Behalf of the West Virginia Chamber of Commerce
July 19, 1999

My name is Kathy G. Beckett, an attorney with the law firm of Jackson & Kelly PLLC. I am offering the following statement on behalf of the West Virginia Chamber of Commerce ("the Chamber") concerning the rulemaking package presented for comment by the Office of Air Quality addressing 45 CSR 1, 2, 3, 4, 5, 6, 7, 10, 12, 16, 17, 18, 23, 25, 33, and 34. Although the Chamber will be filing more detailed written comments concerning each of these rules by the filing deadline of July 28, 1999, it would like to offer the following general comments on this rulemaking package.

The Office of Air Quality ("OAQ") held a public meeting in Flatwoods, WV on November 17, 1998, where it announced its goal of updating and "harmonizing" OAQ's existing rules in time for submittal to the 2000 Legislature. It was announced that all rules were open for discussion and review. With that announcement began a rigorous schedule of meetings to begin the process of collecting comments and ideas about the need to update and streamline the state's air quality regulatory program. For those of you who attended the meetings, I do not have to tell you about the tireless commitment of time the OAQ staff devoted to managing the review process. Additional support from the stakeholder participants combined to create a very rich experience.

The Chamber is a strong supporter of the stakeholder review process. The model where a state administrative agency invites the public to engage in an honest, thoughtful, open and informal exchange of interests and ideas with the goal of proposing public policy is an excellent one. Those who attended and participated in the meetings that have taken place over the past several months were presented with an opportunity to inquire as to the

purpose of various provisions, question one another's needs, suggest solutions to issues, and propose language, all of which were presented to the Chief for his consideration. The more varied the vantage points of those engaged in the discussion the more creative the answer became. The Chamber applauds this process and encourages the agency and the public to look for other opportunities to engage in such an exercise.

As will be identified in the written comments filed on behalf of the Chamber, there is a very delicate balance that is created in the spirit of compromise. Some of the proposed modifications that were the subject of the review process represent concepts that meet the specific needs and concerns of certain stakeholders. Recognition of the needs of all stakeholders and balancing those needs against on another, and the law is what the development of public policy is about. Great efforts were made during the discussions to blend the needs of the group into the recommended changes. The Chamber recommends that the OAQ to develop a thorough Response to Comments, as a means of recording the intent of the modifications that have been made.

What made this process work is the stated goal of streamlining and updating the program. Where appropriate, the OAQ has proposed incorporation of the updated federal air program. The OAQ has also proposed removal of provisions that are no longer useful. Although this package certainly represents progress, there remain antiquated regulatory concepts that we would all be well served to review again. Tossing away items from our past can be difficult, but the result could be a fresh, new, and efficient regulatory program.

Tonight the Chamber is participating in the next phase of the public review process by providing oral comments on the proposed regulatory changes that have been inspired, in part, by the recommendations of the stakeholders. The Chamber supports the stakeholder process and supports this rulemaking package.

45CSR4

TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS

RESPONSE TO COMMENTS

At the public hearing on proposed revisions to 45CSR4 that was conducted on July 19, 1999, there were two specific oral comments by one commenter regarding this rule. The Division of Environmental Protection, Office of Air Quality (OAQ), also received written comments on the rule from three commenters. In addition, two persons commented at the public hearing concerning all of the OAQ's proposed rules. Both commenters were generally supportive of the proposed rules and the stakeholder process that was utilized by the OAQ to generate the proposed rules. One comment was received from the United States Environmental Protection Agency, Region III, requesting that the public comment period be extended. The OAQ responded to this comment by extending the comment period from July 19, 1999, to July 28, 1999. The OAQ has summarized the comments that are pertinent to 45CSR4 and is providing the following responses.

I. COMMENTER: James Kotcon, Vice Chairman, Monongahela Group, WV Sierra Club

COMMENT A. *The need for the variance that is described in Section 5 is questionable*

The commenter noted that if there is an unavoidable malfunction of equipment which causes or contributes to an objectionable odor, the director may issue a variance for a period not to exceed ten days and that any person who wants such a variance should make application to the director. The commenter stated that this was "a fairly non-sensical approach" since it meant that an application could be made to the director in anticipation of an unavoidable breakdown and that a waiver from the 45CSR4 rule might be received. The commenter also suggested that some alternative language from 45CSR2 might be an improvement on the 45CSR4 language but recommended deletion of the odor variance procedure.

RESPONSE A. Subsection 5.1 of the proposed rule states that "Due to an unavoidable malfunction of equipment, the discharge of air pollutants which causes or contributes to an objectionable odor may be permitted by the Director for periods not to exceed 10 (ten) days under specific conditions. Any person who desires such a variance shall make application to the Director in the manner prescribed by the Director." The OAQ responds that this provision is intended to require a person to apply for a variance after an unavoidable malfunction has occurred. The language for variances in 45CSR4 reflects the consensus that was reached on this provision during the stakeholder process.

COMMENT B. *The language in Section 7 needs to be more specific*

The commenter stated that the language in Section 7, which authorizes the Director to take any and all enforcement actions authorized under the Code for a violation, is extremely vague and needs to be more specific concerning enforcement.

RESPONSE B. Subsection 7.1 of the proposed rule states that "Notwithstanding any other provisions in this rule, the Director may take any and all enforcement actions authorized under

the Code for a violation of this rule, including, but not limited to, requiring the immediate cessation or abatement of the discharge causing or contributing to the objectionable odor." The purpose of subsection 7.1 is to clarify that the enforcement provisions contained in the Code remain applicable to a violation of the rule, and whenever the Director determines the rule's provisions relating to corrective measures and control programs are either ineffectual or insufficient to abate an objectionable odor in a timely manner, the enforcement provisions of the statute may be utilized. The specific enforcement action to be taken at that time will have to be developed on a case-by-case assessment of the specific situation.

II. COMMENTER: Robert G. Diener P.E. , Professor, WVU

COMMENT A. *The proposed regulation needs to be strengthened*

The commenter believed that the proposed rule is weak and ineffectual, and, for example, does not adequately define odor or methods for measurement or remediation.

RESPONSE A. The OAQ believes that the definitions of "odor" and "objectionable odor" that are described in Section 2 are adequate for the purposes of this proposed rule. The OAQ does not agree that the proposed rule is weak, but rather, that it provides a wide array of measured approaches (under subsection 3.4) to facilitate the successful resolution of various kinds of odor problems (some of which may require the development of control programs on a case-by-case basis to address specific conditions.) The proposed rule includes a very strong provision which gives the Director the authority to take any and all enforcement actions, including, but not limited to, requiring the immediate cessation or abatement of a discharge causing or contributing to an objectionable odor. The OAQ believes that the combined provisions of the proposed rule revisions will provide the flexibility to address a broad variety of odor conditions in an organized, effective, and professional fashion. The screening process for the determination of whether an odor is objectionable and repetitious, under the proposed rule, will minimize the use of regulatory resources on inconsequential or one-time odor incidents and focus attention and activity on the development of action plans to abate repetitive objectionable odors in a lasting and satisfactory fashion.

COMMENT B. *Objectionable odor emissions should not continue during studies*

The commenter believes that sources of objectionable odors should not be allowed to continue such emissions while conducting related studies and that such studies should be done in the permitting process.

RESPONSE B. The OAQ responds that subsection 3.5 of the proposed rule requires permit applicants to provide a description of the intended means of compliance with requirements in subsection 3.1 which prohibit objectionable odors. Subsection 3.4 of the proposed rule provides that studies, as approved by the Director and within a specified time period, may be required when the Director has reasonable cause to believe that a person or persons is causing or contributing to a repetitious objectionable odor. The results of these studies may be used by the Director to determine whether the corrective measures or control program required under subsection 3.3 should be approved or modified. Allowing time for the submittal, evaluation, approval, and implementation of a control program may be the best long-range solution to achieve compliance.

COMMENT C. *Proposed Massachusetts draft compost regulations should be adopted in WV*

The commenter recommended adoption of the Commonwealth of Massachusetts draft "COMPOST FACILITY REGULATIONS."

RESPONSE C. The OAQ responds that the Commonwealth of Massachusetts draft "COMPOST FACILITY REGULATIONS" were discussed during the stakeholder process that was used for the development of the proposed WV legislative rule 45CSR4. Analysis of air samples by an odor panel is one of the study options that is described in subsection 3.4 of the proposed rule. If the OAQ exercises this option or any other option for a specific situation, all pertinent technical approaches including those described in the Commonwealth of Massachusetts draft "COMPOST FACILITY REGULATIONS" would normally be considered.

III. COMMENTER: Kathy G. Beckett, Counsel to the West Virginia Chamber of Commerce

COMMENT A. *The Chamber is generally supportive of the proposed rule*

The Chamber indicated support for the definition of objectionable odors (subsection 2.5), based upon its position that the determination must be based upon multiple factors.

RESPONSE A. The commenter is correct that the term "objectionable odor" underwent much discussion in the stakeholder process. The OAQ believes that the language "investigations, determinations, or complaints" means that either one or all of the factors may form the basis of the Director's determination, depending upon the particular situation.

COMMENT B. *The Chamber also supports reporting of discharges*

The commenter also indicated support for reporting of accidental and other infrequent discharges which may cause or contribute to objectionable odors (per subsection 4.1) but suggested a revision to reporting after the person responsible "reasonably has knowledge of such discharge" rather than "has knowledge of such discharge."

RESPONSE B. The OAQ believes that the statement *"has knowledge of such discharge"* accurately reflects the consensus that was reached on this provision at the completion of the stakeholder process. The term "reasonable" in the rule relates to the time within which an accidental discharge must be reported. It does not, as the commenter suggests, relate to the determination as to which person is responsible for the discharge.

COMMENT C. *Enforcement provisions in Section 7 do not recognize the provisions of Section 3*

The commenter believes that the enforcement provisions in Section 7 fail to recognize the notification and investigation process in Section 3 and that Section 7 should only be invoked after reasonable efforts to implement Section 3 have failed.

RESPONSE C. The purpose of subsection 7.1 is to clarify that the enforcement provisions contained in the Code remain applicable to a violation of the rule, and whenever the Director determines the rule's provisions relating to corrective measures and control programs

are either ineffectual or insufficient to abate an objectionable odor in a timely manner, the enforcement provisions of the statute may be utilized.

IV. COMMENTER: Tom Degen, representing Calhoun County Solid Waste Authority

COMMENT A. *The proposed changes will not correct the flawed approach to addressing odors*
The commenter reflected concern that the proposed changes to 45CSR4 will not effectively correct the flawed approach to addressing odors that has been in the rule for thirty years and that the rule does not incorporate current odor control technology protocols. The commenter also provided a copy of the proposed odor policy from the State of Massachusetts entitled draft "COMPOST FACILITY REGULATIONS." for consideration by the OAQ.

RESPONSE A. With respect to the statement that the rule provides an ineffective approach to addressing odors, the commenter is referred to the OAQ's response in Section II., Response A., above. Further, the revised rule contains language in subsection 3.6 which permits the Director to require different or additional corrective measures when previously approved measures are ineffectual. The proposed Commonwealth of Massachusetts draft "COMPOST FACILITY REGULATIONS" were discussed during the stakeholder process that was used for the development of the proposed WV legislative rule 45CSR4. Analysis of air samples by an odor panel is one of the assessment technologies included in subsection 3.4 of the proposed rule as one of the study options. If the OAQ exercises this option or any other option for a specific situation, all pertinent technical approaches including those described in the Commonwealth of Massachusetts draft "COMPOST FACILITY REGULATIONS" would normally be considered.

V. COMMENTER: Connie Gratop Lewis

COMMENT A. *Concern about the lack of deadlines*
The commenter expressed concern about the lack of deadlines in this and other proposed rules and believes that such language where appropriate would strengthen the rule.

RESPONSE A. The OAQ responds that the proposed rule requires the establishment of deadlines for the submittal of proposed corrective measures or control programs in subsection 3.3 and also requires that related studies, as may be required per subsection 3.4, are to be conducted within a specified time period. The various kinds of odor problems that the proposed rule is intended to address and the associated differences in the complexity of the corrective measures or control programs precludes the establishment of absolute deadlines which would be applicable to all situations.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Office of Air Quality

Subject: To Prevent and Control the Discharge of Air Pollutants into the Open Air which Causes or Contributes to an Objectionable Odor or Odors

CSR Cite: 45CSR4

Counsel: JAA

PERTINENT DATES

Filed for public comment: June 16, 1999
Public comment period ended: July 28, 1999
Filed following public comment period: August 5, 1999
Filed LRMRC: August 5, 1999
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Brief Summary

This rule establishes criteria for regulating objectionable odors as statutory air pollution. The rule establishes procedures for determining when a violation of the rule has occurred and procedures to eliminate an objectionable odor.

Section Summary

Section 2, Definitions: "Malfunction is defined as and sudden and unavoidable failure which causes air pollution. malfunctions do not include any preventable condition. "Odor panel" is defined as a group of DEP [Department of Environmental Protection] representatives which investigate an odor who have been selected by the Director of DEP based on their ability to judge odor intensity. "Stationary Air Pollution" is defined as a discharge of any

material into the air which would harm human health or welfare, animal or plant life, or which would interfere with the enjoyment of life or property.

Section 3. prohibits objectional odors. When a violation of this rule occurs the DEP must attempt to orally notify the party suspected of causing the odor and also send that party written notification of the allegation. The Director shall determine necessary corrective actions. Per Section 3.4, when the DEP has a reasonable belief that a person is violating this rule, the agency may also require studies and testing of the odor. A mobile testing unit and other measuring methods are specified. Upon receipt of these tests the Director my require appropriate corrective measures. Section 3.5 requires that any permit application for a stationary source of air pollution shall comply with the requirements of this rule. Per Section 3.6, persons undertaking compliance measures to meet the requirement of this rule shall be deemed to be in compliance with this rule.

Section 5 "Notice of Violation" has been deleted.

New Section 5 [previously Section 6] provides for variances from the requirements of this rule, and allows discharges of objectional odors for 10 days due to an unavoidable malfunction of equipment.

Section 7 provides for enforcement of the rule and states that the Director may take what ever action that is necessary, including immediate cessation or abatement of a discharge, to enforce the provisions of this rule.

AUTHORITY

Statutory authority: W.Va. Code §22-5-4 provides:

> (a) The director is authorized:
> (1) To develop ways and means for the regulation and control of pollution of the air of the state;
> (2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in

furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the director may deem advisable and necessary;

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof....

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.